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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

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8 DELPHI CORPORATION, et al.

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10 Debtors.

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14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 May 9, 2006

19 10:18 A.M.

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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2 Hearing re Motion to Authorize Motion for  
3 Order Under 11 U.S.C. Section 1113(c)  
4 Authorizing Rejection of Collective Bargaining  
5 Agreements and Under 11 U.S.C. Section 1114(g)  
6 Authorizing Modification of Retiree Welfare  
7 Benefits

8

9 Hearing re Statement/Expert Report of Thomas  
10 A. Kochan in Opposition to Debtors' Motion for  
11 Order Under 11 U.S.C. Section 1113(c)  
12 Authorizing Rejection of Collective Bargaining  
13 Agreements and Under 11 U.S.C. Section 1114(g)  
14 Authorizing Modification of Retiree Welfare  
15 Benefits

16

17 Hearing re Motion to Authorize Motion for  
18 Order Under 11 U.S.C. Section 1113(c)  
19 Authorizing Rejection of Collective Bargaining  
20 Agreements and Under 11 U.S.C. Section 1114(g)  
21 Authorizing Modification of Retiree Welfare  
22 Benefits

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1 Hearing re Motion to Dismiss Party/Limit  
2 Participation in the Hearing on Delphi's  
3 Section 1113 and Section 1114 Motion  
4  
5 Reply to Motion Omnibus Reply of UAW in  
6 Support of Motion to Limit Participation in  
7 the Hearing on Delphi's Section 1113 and  
8 Section 1114 Motion  
9  
10 Notice of Hearing/Proposed 1113/1114 Hearing  
11 Agenda  
12  
13 Hearing re Motion to Authorize Motion for  
14 Order Under 11 U.S.C. Section 1113(c)  
15 Authorizing Rejection of Collective Bargaining  
16 Agreements and Under 11 U.S.C. Section 1114(g)  
17 Authorizing Modification of Retiree Welfare  
18 Benefits  
19  
20 Declaration of Kevin M. Butler in Support of  
21 Delphi's Motion for Authority to Reject  
22 Collective Bargaining Agreements Under 11  
23 U.S.C. Section 1113(c) and Modify Retiree  
24 Welfare Benefits Under 11 U.S.C. Section  
25 1114(g)

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2 Declaration of Randal A. Middleton

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4 Objection to Motion

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6 Declaration of Donald L. Griffin

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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All

3 right. Delphi Corporation?

4 MR. BUTLER: Your Honor, good

5 morning. We have -- my name is Jack Butler.  
6 I'm from the law firm of Skadden, Arps, Slate,  
7 Meagher & Flom, representing the debtors.  
8 Your Honor, with me is trial counsel for these  
9 proceedings and my partners from Skadden,  
10 Arps, Kayalyn Marafioti and Jay Burke. From  
11 special labor counsel O'Melveny & Myers,  
12 Robert Siegel Tom Jerman, and Jeffrey Kohn.  
13 And from the Gruheman law firm, our special  
14 counsel, Lonnie Hassel.

15 Your Honor, the debtors have filed  
16 and served a proposed 1113, 1114 hearing  
17 agenda. There are two matters on the agenda.  
18 And, with Your Honor's permission, we will  
19 proceed in order of the agenda.

20 THE COURT: That's fine.

21 MR. BUTLER: Your Honor, the first  
22 matter on the agenda is the UAW motion to  
23 limit participation found at Docket No. 3447  
24 and Ms. Marafioti will represent the debtors'  
25 interest in that matter, Your Honor.

14

1 MS. CECCOTTI: Good morning, Babette  
2 Ceccotti for the UAW this morning on the  
3 motion to limit participation to interested  
4 parties under Section 1113(d). Just as a  
5 housekeeping matter, Your Honor, I would like

6 to just inform the Court the trial counsel for  
7 the UAW will introduce themselves as  
8 appropriate to do so in connection with the  
9 next matter. Bruce Simon, Bruce Levine, Peter  
10 DeChiara and others from Cohen, Weiss and  
11 Simon.

12 THE COURT: Okay.

13 MS. CECCOTTI: Your Honor, we served  
14 yesterday a reply, an omnibus reply, to the  
15 various objectors and I -- we did have one  
16 delivered to chambers. I hope the Court --

17 THE COURT: Yeah, I know. I read  
18 that.

19 MS. CECCOTTI: Okay. That's fine,  
20 Your Honor. In that case, I believe that we  
21 could summarize the issues as follows.

22 The proceedings that are up next,  
23 the Section 1113 and Section 1114 proceedings,  
24 Your Honor, take place under specialized  
25 provisions of the Bankruptcy Code and you'll

15

1 hear an awful lot about that in the coming  
2 hours. The point for purposes of this motion  
3 is that the case proceeds with a test set  
4 forth in those statutes that directly relates  
5 to the applicable non-bankruptcy law that

6 Section 1113 and 1114 imports into those  
7 sections, specifically, the collective  
8 bargaining relationship between Delphi and its  
9 unions.

10 Because the statute requires  
11 bargaining to take place over particularized  
12 proposals and requires the debtor to meet its  
13 burden by demonstrating substantive tests  
14 about those proposals, substantive tests about  
15 the way the parties have addressed those  
16 proposals, it is entirely logical that the  
17 United Court in the 7th Circuit opinion would  
18 limit participation logically, under 1113(d)  
19 and read interested parties to be limited to  
20 those parties. Otherwise, the proceeding  
21 simply makes no sense. I think that we can  
22 see this most starkly in the response to the  
23 1114 -- 1113 and 1114 motion filed by the  
24 creditors' committee, which seeks to  
25 participate here because of its status under

16

1 1109(b) as a creditors' committee.

2 What the creditors' committee has  
3 done is simply summarizes the debtors'  
4 position. That's by and large what they've  
5 done in their papers. They have a brief  
6 aspect of their response that expresses

7 concern about other aspects down the road:  
8 recoveries, claims. They don't want claims,  
9 and in that sense, their argument on that  
10 discreet point is very similar, in fact,  
11 identical to the other objectors' concerns  
12 here. All of the concerns relate to matters  
13 that are not part of this particularized 1113,  
14 1114 process.

15           So, when the United Court says that  
16 affected parties -- interested parties, excuse  
17 me -- refers to the parties of the collective  
18 bargaining agreement, logically, they are the  
19 parties that can present the evidence and make  
20 the arguments most directly related to the  
21 matters that must be proven up by the debtor  
22 and defended against by the unions.

23           Therefore, it is our view that the  
24 Caldor decision, which everybody has cited,  
25 and which discusses whether -- really, which

17

1 discusses whether 1109(b) is read to permit  
2 automatic participation in adversary  
3 proceedings. Of course, that case involved  
4 the Second Circuit's discussion of two  
5 different positions on that score taken in a  
6 number of Circuits and comes down on the side



7 of automatic participation in adversary  
8 proceedings.

9 But we don't see Caldor as invading  
10 1113(d). It's one thing to say that parties  
11 in interest, under 1109(b) have a right to  
12 participate generically. But we don't think  
13 Caldor stands for the proposition that 1109(b)  
14 means where a statute has its own  
15 particularized set of evidence and standards  
16 that have to be met under that standard and  
17 says the parties are the interested -- the  
18 parties to the hearing are the interested  
19 parties that 1109(b) automatically chumps --  
20 that 1109(b) chumps 1113(d). There isn't  
21 really anything for parties other than the  
22 parties to the agreement and the debtors to  
23 contribute in the most direct evidentiary way.  
24 And therefore, we think that the UAL Corp.  
25 decision is correct.

18

1 Now, the issues that the parties --  
2 the objectors have raised -- I'm going to put  
3 MBUSI in its own category for a moment --  
4 again, I think, illustrate the correctness of  
5 the UAL Corp.'s decision. The interests here  
6 that they have expressed have to do with  
7 ultimate recoveries, have to do with which

8 debtors are going to ultimately be responsible  
9 for various obligations. These are not part  
10 of the 1113 and 1114 tests. The Ad Hoc Trade  
11 Committee, which submitted an objection as  
12 well, is actually taking that issue one step  
13 farther attenuated by saying, well, our issue  
14 really has to do with the issues that were  
15 raised in two of the objections, Wilmington  
16 Trust and the shareholders. So, we could see  
17 that when the Seventh Circuit is concerned  
18 about the manageability of a proceeding, it's  
19 not necessarily just talking about the number  
20 of people that are in the courtroom. And  
21 obviously, even without those parties, there  
22 are going to be a number of people here. It's  
23 talking about, as well, in substance, the  
24 manageability of the issues that the Court  
25 should deal with or should be forced to deal

19

1 with in an already complicated Section 1113  
2 and 1114 case.

3           Therefore, we think that the UAL  
4 Corp. decision is correct. We think that it  
5 is not contradicted by the Caldor principle at  
6 all. And that, in fact, the parties to the  
7 hearing should be the unions and the debtors.

8 Now, there is participation and  
9 there is participation. We have not moved to  
10 strike anybody's pleadings here to the extent  
11 that other parties wish to apprise the Court  
12 of their views. We believe that they have  
13 done so adequately in the papers that they  
14 have filed and that that should serve,  
15 particularly given the fact that their issues  
16 are so remote from the core issues that are at  
17 stake here today. That that should more than  
18 serve as an expression of the views of those  
19 parties for purposes of the Section 1113 and  
20 Section 1114 issues.

21 Your Honor, if you're going to take  
22 argument from the objectors, I'd just like to  
23 reserve for a couple of minutes for reply, if  
24 that's all right.

25 THE COURT: Okay. Well, let me ask

20

1 you a question, though.

2 MS. CECCOTTI: Sure.

3 THE COURT: I understand your  
4 argument about the specialized standards under  
5 Section 1113 that I need to apply to determine  
6 whether the agreement or agreements may be  
7 rejected or not. But, isn't there also a  
8 fundamental issue which is the one raised by

9 Appaloosa, which is whether there should be  
10 rejection at all? And it seems to me on that  
11 point, and I guess perhaps also on the issue  
12 of whether the proposal that everything flows  
13 from is a proper exercise of business  
14 judgment, why shouldn't, on those limited  
15 issues, parties have standing to be heard?

16 MS. CECCOTTI: Your Honor, some of  
17 the issues raised by the shareholders candidly  
18 were issues that we had raised as well. And,  
19 on that score, again, I would go back to the  
20 United Court's observation that the issues  
21 that they have raised that overlap the issues  
22 we have raised we're here to pursue those  
23 issues. We're certainly not dropping them, we  
24 can assure Appaloosa's counsel. In terms --  
25 on that score.

21

1 In terms of the proposal, again, I  
2 know that they've raised an issue about fair  
3 and equitable. I frankly think that --

4 THE COURT: No, I'm not talking  
5 about within the construct of the findings  
6 under 1113, but just generally as to whether  
7 it meets the debtors' business judgment test.

8 MS. CECCOTTI: Your Honor, it seems

9 to me that, in the first instance, it is up to  
10 the parties most directly involved with those  
11 proposals to determine whether or not they  
12 suffice for 1113 purposes. The debtor  
13 obviously had its reasons for making the  
14 proposals that it did and, frankly, Appaloosa  
15 and any other party that really wants to  
16 comment on that once again is doing so from a  
17 position that is necessarily once removed from  
18 that process. And it seems to me, again,  
19 there's a difference between saying that a  
20 party can pick and choose from that sort of  
21 distant relationship to the process. Or  
22 distant vantage point, if you will, from the  
23 process and say, well, we think this or that  
24 about this aspect of the proposal or that  
25 aspect of the proposal, but really the point

22

1 of the 1113 and 1114 hearing, a litigation  
2 process is to determine whether as a whole the  
3 debtor had met its burden.

4 So, once again, it seems to me if at  
5 the end of the day those parties in the  
6 courtroom listening to everything want to make  
7 views known in a limited way about that, well,  
8 then, that's up to the Court to determine how  
9 the Court wants to manage that. But I think

10 that's a very different issue from saying that  
11 as a matter of the debtor marching through its  
12 case, standard by standard by standard, a  
13 party that does not have the right to  
14 participate in what is the principle function  
15 of 1113, which is to make sure that there is a  
16 bargaining process that has been exhausted  
17 before you go to litigation. That's really  
18 the focus. Or that's a principle focus of it.  
19 I don't see how Appaloosa or any other party  
20 can have a credible, and I don't mean that in  
21 a pejorative sense, but simply a credible  
22 opinion on that from the standpoint of a party  
23 that is that far removed from the process.

24 THE COURT: Okay.

25 MS. CECCOTTI: Thanks.

23

1 THE COURT: Thank you.

2 MS. MARAFIOTI: Good morning, Your  
3 Honor. Kayalyn Marafioti on behalf of Delphi  
4 Corporation. Your Honor, the debtors'  
5 position is that the statutory committees in  
6 this case, the creditors' committee and the  
7 newly appointed equity security holders'  
8 committee do have the right to appear and be  
9 heard on Delphi's motion for authority to

10 reject the collective bargaining agreements.  
11 Section 1113(d)(1) of the Code simply says  
12 that all interested parties may appear and be  
13 heard. And Section 1114(k)(1) has identical  
14 language. And we do believe that the Second  
15 Circuit decision in Caldor, which holds that a  
16 creditors' committee has the right to be heard  
17 on any issue in the case whether it's in an  
18 adversary proceeding or a contested matter,  
19 does govern here and we think common sense  
20 extension of that is the equity committee  
21 should be heard as well. And to the extent  
22 that the Seventh Circuit in UAL holds  
23 otherwise, we don't think it should govern.  
24 But I do want to address one point  
25 that was point in the UAL reply that was

24

1 served yesterday afternoon.  
2 THE COURT: UAW.  
3 MS. MARAFIOTI: I'm sorry. UAW.  
4 That's right. In that brief, the UAW suggests  
5 that the pecuniary concerns of stakeholders in  
6 the case are somehow not at issue on a motion  
7 to reject a collective bargaining agreement  
8 and a comment was just made to that effect a  
9 moment ago.  
10 We believe that Second Circuit law

11 directly contradicts that proposition. For  
12 example, in the Kerry Transportation case,  
13 which was cited in our opening and reply  
14 briefs on the underlying motion. In  
15 discussing the balancing of the equities under  
16 Section 1113, the Court expressly identifies  
17 "the likely reduction in value of creditor  
18 claims if the CBA remains in force as one of  
19 the equitable considerations that a Court may  
20 take into account in determining whether to  
21 grant the relief requested." So, under that  
22 reasoning, we think that 1113 does encompass  
23 the pecuniary concerns of the stakeholders and  
24 the statutory committees as the  
25 representatives of those stakeholders should

25

1 be heard on the subject.  
2 Similarly, Kerry Transportation, as  
3 well as the Second Circuit decisions in Royal  
4 Composing Room and Maxwell, which are  
5 governing here, we believe, in interpreting  
6 the statutory meaning of "necessary" under  
7 Section 1113(b)(1)(a). In other words, what  
8 does the statute mean when it says that "the  
9 collective bargaining agreement proposal must  
10 be necessary to permit the reorganization of



11 the debtor." Discusses the question of  
12 whether rejection of the collective bargaining  
13 agreement would increase the likelihood of a  
14 successful reorganization. And on that topic,  
15 by any measure, we think that the creditors'  
16 committee certainly has a right to be heard.

17 The committee and its advisors both  
18 formally and informally have met with the  
19 company and its advisors on many, many  
20 occasions over the past seven months since  
21 this case was commenced and the committee is  
22 certainly in a position to assert its views on  
23 what is necessary to achieve a successful  
24 reorganization.

25 So, in short, we believe that the

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1 voices of the statutory committees should be  
2 heard on this matter and we request that the  
3 Court permit those voices to be heard.

4 THE COURT: Okay. Thank you.

5 MR. ROSENBERG: Good morning, Your  
6 Honor. Robert Rosenberg, Latham & Watkins,  
7 for the statutory creditors' committee. Your  
8 Honor, I won't belabor the subject. I'll  
9 simply join in Ms. Marafioti's comments, both  
10 in terms of the case law in the Circuit of the  
11 right of the creditors' committee to

12 participate and the very obvious points that  
13 she made vis-a-vis the financial stake of the  
14 creditors' committee constituency in how this  
15 issue comes out. Nonrejection equals  
16 immediate costs out of their pocket; rejection  
17 equals a pre-petition claim that dilutes their  
18 pre-petition claims. There is obviously a  
19 significant and substantial financial stake in  
20 the outcome here.

21 Ms. Ceccotti suggested that the  
22 creditors' committee pleading Exhibit A as to  
23 why we shouldn't participate was nothing more  
24 than a parroting of the debtor. Obviously,  
25 she hasn't seen the time records yet or the

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1 costs of that work product and the due  
2 diligence that went into it. Consistent with  
3 the creditors' committees' fiduciary  
4 obligations of those issues were scrubbed and  
5 scrubbed very, very carefully, both in terms  
6 of whether or not a rejection was in the best  
7 interest of the estate, ie., consistent with  
8 the business judgment of the debtor. And  
9 whether or not the procedural steps to get  
10 there were satisfied under Section 1113. This  
11 is by no means a mirror me-too product. The

12 mirror is the result of the statutory  
13 standards being clear but the result is a  
14 product of the committees' due diligence  
15 respecting both the debtors' process and the  
16 debtors' business judgment. I dare say had  
17 that result come out otherwise, we wouldn't be  
18 hearing the argument from Ms. Ceccotti that we  
19 shouldn't be permitted to participate. Thank  
20 you.

21 THE COURT: Okay.

22 MS. STEINGART: Good morning, Your  
23 Honor. Bonnie Steingart from Fried, Frank on  
24 behalf of the equity committee. I rise to  
25 let the Court know that the equity committee

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1 has now indeed retained counsel as of last  
2 night and that we expect to participate in  
3 these proceedings. We have spoken to counsel  
4 for the debtor and we have reviewed the papers  
5 filed here. We certainly echo the views of  
6 both the debtor and the creditors' committee  
7 and certainly, in light of the questions  
8 raised by Your Honor, the equity committee  
9 does have a very important view about this  
10 proceeding, about whether this collective  
11 bargaining agreement is or should be rejected  
12 at all. And we hope to have that opportunity.

13                   Indeed, the issues raised by the  
14   union are issues that are well within the  
15   ability of this Court to deal with to the  
16   extent that the participation of the  
17   committees raises any issue with respect to  
18   manageability. That is certainly something  
19   the Court can deal with and all can  
20   participate and make sure the Court is  
21   informed of all views with respect to whether  
22   indeed this agreement should be rejected as  
23   well as other issues.

24                   So I would urge the Court to permit  
25   the statutory committees and those appointed

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1   by the U.S. Trustee to participate. Thank  
2   you.

3                   THE COURT: Okay. Thank you.

4                   MR. FOX: Good morning, Your Honor.  
5   Edward Fox from Kirkpatrick & Lockhart  
6   Nicholson Grant, LLP on behalf of Wilmington  
7   Trust Company. Your Honor, if you take the  
8   debtors' argument in this matter that 1109(b)  
9   entitles that the equity committee and the  
10   creditors' committee to participate, then you  
11   have to take the view, as well, that it allows  
12   other parties in interest, including the

13 Indenture Trustee, to participate as well.

14           To come back to it, I want to brief,  
15 because I'm sure you've read the papers. As a  
16 matter of statutory construction, I think that  
17 the Supreme Court's position on this would be  
18 clear that absent a positive repugnance  
19 between the language in 1113 and the language  
20 in 1109(b), the language of 1113 would not be  
21 read to cut back on the standing granted by  
22 1109(b). In fact, it should be viewed either  
23 as being co-extensive with or greater than the  
24 standing that's otherwise permitted.  
25 Certainly Judge Bushman in the Sandhurst

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1 decision viewed the term "interested parties"  
2 to mean something greater than parties in  
3 interest in 1109(b) and if you look at  
4 Bankruptcy Rule 2018, for instance, it allows  
5 interested entities, which is a group which is  
6 greater than or beyond parties in interest, to  
7 request that they be entitled to participate.

8           So, it seems to me that certainly  
9 those two views, both of Judge Bushman's  
10 decision and the Rules, would indicate an  
11 extension of the group of parties that may  
12 participate rather than cutting back on those  
13 parties that may participate in the 1113

14 proceedings.

15           We also refer you to the -- in our  
16 papers, to the floor statement. I believe it  
17 was from Senator Hatch on this point, which  
18 doesn't give any indication that it was an  
19 attempt to cut back on the inclusion of  
20 parties in interest. And, in fact, although I  
21 did not quote it, if you look at the floor  
22 statement from Senator Thurman, he indicates  
23 that the term "interested parties" should be  
24 read to include nonunion employees would be  
25 allowed to come to court and participate in

31

1 hearings as well. I think there's, if  
2 anything, rather than looking at what the UAL  
3 Court called the "natural reading and  
4 statute", if you look at ordinary terms of  
5 statutory interpretation, the motion by the  
6 UAW has to be denied. Thank you.

7           THE COURT: Okay.

8           MR. LAURIA: Good morning, Your  
9 Honor. Tom Lauria with White and Case. We  
10 represent Appaloosa Management as an objector  
11 to this motion. We also represent Wexford  
12 Capital, Partas Capital Management and Lappy  
13 Conway as an ad hoc committee of equity

14 holders who, in the aggregate, own  
15 approximately twenty percent of the issued and  
16 outstanding common stock of Delphi.

17 Chapter 11 is premised on the notion  
18 of stakeholder participation. The argument of  
19 the UAW is built on a perceived distinction  
20 between the term "party in interest" as set  
21 forth in Section 1109 of the Bankruptcy Code  
22 and "interested party" as set forth in Section  
23 1113. Fundamentally, this view overlooks a  
24 basic rule of statutory construction that  
25 identical or similar words in different parts

32

1 of the same statute should be afforded the  
2 same or similar meaning.

3 But, more importantly, it overlooks  
4 the fact that, in this case, the labor issues  
5 have been recognized by all parties, I think  
6 including the Court, as the main event, as it  
7 were in this case, the thing that will be  
8 outcome determinative in terms of the ultimate  
9 economic recovery of parties in this case,  
10 including shareholders.

11 Moreover, this is not the  
12 determination to be made under Section 1113  
13 and 1114 is not just about bargaining. The  
14 statute makes specific references, I think as

15 has been noted, to whether or not the relief  
16 is necessary to a reorganization, whether or  
17 not the proposal is fair and equitable to all  
18 affected parties and whether or not the  
19 equities clearly favor rejection. It is  
20 inconceivable that those types of issues  
21 foreclose the parties affected from being  
22 heard on their outcome.

23           The argument made by the UAW this  
24 morning that we maybe should be able to  
25 express our views but can't participate in the

33

1 development of an evidentiary record sets us  
2 up for futile participation. These issues are  
3 fact-intensive, the Courts recognize, and we  
4 have to have a fair opportunity to participate  
5 fully and to build our record to address the  
6 ultimate issues that the Court is required to  
7 decide.

8           I also need to point out, I guess,  
9 that the shareholder interests are obviously  
10 distinguishable from those of the union and  
11 the employees in many respects. The bottom  
12 line, the fundamental principle of Chapter 11  
13 cannot be undone by trying to strain the  
14 difference between "party in interest" and



15 "interested party."

16 We all have a great deal of respect  
17 for Judge Easterbrook, the author of the UAL  
18 decision, but, in this case, he simply got it  
19 wrong. Even in the Court's discussion of the  
20 notion that consensual modification would only  
21 require the participation of the parties to  
22 the agreement, the Court got it wrong. In  
23 fact, if a debtor wants to modify a collective  
24 bargaining agreement during the pendency of a  
25 Chapter 11 case, a motion has to be filed,

34

1 notices provided, parties in interest respond  
2 and a contested matter may ensue.

3 So, Your Honor, we think it's  
4 absolutely clear that for this process to  
5 work, particularly in this case, broad  
6 participation needs to be permitted.

7 THE COURT: Okay. Thank you.

8 MR. HALL: Mike Hall, Your Honor,  
9 Burr & Forman for Mercedes Benz USI. I'll be  
10 brief. All of the other parties to this case  
11 who have asked to speak on this issue, or  
12 asked to be heard on this issue, have one  
13 thing in common and that is they all think  
14 that this is an all or nothing ruling. All  
15 contracts are rejected, no contracts rejected.

16 Our position is the Court should take -- pay  
17 careful attention and perhaps reject some and  
18 not others and that's why we want to be heard.  
19 I'll rely on the legal arguments that we've  
20 already written. Thank you.

21 THE COURT: Okay.

22 MS. ENGLUND: Your Honor, Alyssa  
23 Englund with Orrick, Herrington & Sutcliffe.  
24 We represent the ad hoc committee of trade  
25 claimant and I'll be very brief. Just resting

35

1 on our papers, basically, we believe that the  
2 fair and equitable standard does not  
3 necessitate a specific determination of claim  
4 amounts in this hearing. But if Your Honor  
5 decides to make those specific claim amount  
6 determination, then we would like to be heard.  
7 Thank you.

8 THE COURT: Okay. Ms. Ceccotti?

9 MS. CECCOTTI: Just briefly in  
10 reply, Your Honor, I think I'm not going to  
11 repeat my opening but I do think once again  
12 the context of the statute is important. It's  
13 not simply about looking at words -- similar  
14 words in one part of the statute versus  
15 similar words in another part of the statute.

16 In terms of Delphi's argument, and I  
17 probably should have addressed this at the  
18 outset, we fully expect the debtors to make a  
19 case regarding all of the elements in Section  
20 1113 and 1114, including the balance of the  
21 equities. The balance of the equities, as you  
22 will hear in much more detail later on,  
23 consist of a variety of types of factors that  
24 the Courts have looked at, including the  
25 factors that Ms. Marafioti expressed. They --

36

1 the process by which the Court will entertain  
2 that consideration is exactly what it says.  
3 If they balance of a variety of factors, the  
4 Court may balance some more than others, but  
5 it is only one piece. And even if the Court  
6 says that it's going to take account of six  
7 factors or four factors or what have you,  
8 including the factors concerning the effective  
9 claims, it is still one factor of many. It is  
10 a subpart of one of the elements that must be  
11 demonstrated under Section 1113 and Section  
12 1114.

13 Again, because the debtors are going  
14 to include that element as part of their  
15 presentation, that view will be represented.  
16 However they choose to do so by the debtors,

17 it's covered. By letting parties -- other  
18 parties into the case in a full blown way just  
19 for that purpose or for that -- to address  
20 that sub-element of one of the elements that  
21 needs to be proved may have the effect of more  
22 or less distorting one element of many that  
23 the Court would consider amongst all of the  
24 very significant elements in 1113. So, we  
25 would suggest that that in and of itself does

37

1 not -- would not permit, again, full blown  
2 participation, development of a record and so  
3 forth. It may tend to simply just distort the  
4 case by elevating that factor beyond the point  
5 to which the statute either says,  
6 particularly, in light of the fact that the  
7 factors are discretionary and the balancing  
8 that the Court conducts is just that. It's a  
9 balancing.

10 With regard to Mr. Rosenberg, I have  
11 no doubt that Mr. Rosenberg and his colleagues  
12 spent a lot of time going through the various  
13 materials and did their homework. It appears,  
14 fortunately, however, that they did their  
15 homework largely with the debtors. So, once  
16 again, I would stick with my original view on

17 this, which is that their position is more  
18 than amply covered by the party that's  
19 supposed to be making that case and that is  
20 the debtors.

21 I believe that the other objectors  
22 have simply reiterated points that I made in  
23 my opening, particularly, with respect to the  
24 final comment by the ad hoc trade committee.

25 Once again, there are very serious

38

1 issues here. There are core considerations  
2 that the Court will have to deal with in an  
3 evidentiary matter. Attenuating this out to  
4 recoveries and beyond recoveries is simply not  
5 something that the 1113 process is designed to  
6 encompass nor should it encompass,  
7 particularly, in a case of this magnitude.

8 THE COURT: Okay. Thank you. All  
9 right. I have a motion in front of me by the  
10 UAW to limit the standing of various parties  
11 to be heard on the debtors' pending motion to  
12 reject not only the collective bargaining  
13 agreement with the UAW but a number of other  
14 unions, as well.

15 Generally speaking, under Section  
16 1109(b) of the Bankruptcy Code, a party in  
17 interest, which the statute expressly states

18 includes not only the debtor but also an  
19 official creditors' committee, an official  
20 equity committee, a creditor and an equity  
21 security holder and all of the objectors to  
22 the UAW's motion fall into those categories or  
23 any indenture trustee, which applies to  
24 Wilmington Trust, one of the objectors, "may  
25 raise and may appear and be heard on any issue

39

1 in a case under Chapter 11."  
2 In In Re Calgor Corporation, 303  
3 F3d. 161 (2d Cir. 2002), the Second Circuit  
4 broadly interpreted Section 1109 and applied  
5 it even to adversary proceedings noting, among  
6 other things, that it was not particularly  
7 moved by the argument that by so reading the  
8 statute, it would be rendering adversary  
9 proceedings unmanageable. The Second Circuit  
10 stated that, and to the contrary, that a Court  
11 should be able to develop procedures to the  
12 extent they're necessary to manage the conduct  
13 of the case to permit the issues that were  
14 actually at issue in the proceeding to be  
15 developed in an efficient fashion.

16 The UAW relies upon a different  
17 provision of Chapter 11 to limit and, in fact,

18 eliminate the general right to be heard under  
19 Section 1109(b). That provision is Section  
20 1113(d)(1) of the Bankruptcy Code, which  
21 provides, in relevant part, that all  
22 interested parties may appear and be heard at  
23 the hearing on a debtor's motion to reject a  
24 collective bargaining agreement.

25               Simply, on its face, Section

40

1 1113(d)(1) does not appear to restrict  
2 standing. It merely provides that all  
3 interested parties may appear and be heard.  
4 And it is argued, I think cogently, by the  
5 objectors that to read this provision of the  
6 Code to be in conflict with another provision  
7 of the Code, Section 1109(b), the Court absent  
8 some other reason would need to see more  
9 evidence of congressional intent to override  
10 Section 1109(b)'s generally broad grant of  
11 standing. That argument also is consistent  
12 with Bankruptcy Rule 2018(a), which provides  
13 that even with regard to those who are not  
14 expressly "parties in interest," the phrase  
15 used in 1109(b), "interested entities" may  
16 under proper circumstances have standing in  
17 respect of particular matters before the  
18 Court. That suggests that the phrase in

19 Section 1113(d)(1) is actually a broader grant  
20 of standing than 1109(b), a point that I  
21 believe is echoed by Collier at Seven Collier  
22 on Bankruptcy 1009.03, which states that  
23 although the concept of a party in interest is  
24 necessarily broad, it was not intended to  
25 include literally every entity that may be

41

1 involved in or affected by Chapter 11  
2 proceedings and that Congress has specifically  
3 provided in some circumstances, including  
4 under Bankruptcy Rules 2018(a) and 2018(b)  
5 which pertains to unions to appear even if  
6 they were not technically parties in interest  
7 on particular matters.

8           Notwithstanding that reading, the  
9 Seventh Circuit in *In Re UAL Corp.*, 408 F3d.  
10 847 at 851 (7th Cir. 2005), has taken a  
11 restrictive reading of Section 1113(d),  
12 although I noted did not consider Section  
13 1109(b) at all in its opinion and, apparently,  
14 relied in large measure, if not entirely, on  
15 the argument that a more expansive grant of  
16 standing would, in the Seventh Circuit's view,  
17 render the hearing under Section 1113  
18 unmanageable because of the number of



19 participating entities or potentially  
20 participating entities which, as I noted  
21 earlier, is a point that the Caldor Court and  
22 others have found not to be controlling with  
23 regard to issues of standing generally in  
24 bankruptcy under Section 1109. See,  
25 generally, 7 Collier on Bankruptcy, paragraph

42

1 1109.04(3)(c).

2 Obviously, I take the views of the  
3 Seventh Circuit seriously and I do believe,  
4 having studied the opinion closely as well as  
5 a related opinion in the United Air Lines  
6 case, appearing at 443 F3d. 565 (7th Cir.  
7 2006). And, in light of my reading of those  
8 two opinions and other case law and the  
9 statutes, believe that in two respects  
10 limitation of standing is appropriate in  
11 connection with the motion to reject under  
12 Section 1113.

13 First is really one that doesn't  
14 particularly apply across the board and it  
15 pertains to the unusual facts that appeared in  
16 the UAL case relied upon by the UAW. In that  
17 case, the Seventh Circuit made it clear that  
18 the party who was seeking standing  
19 "acknowledged that its capacity as a fiduciary

20 would be administrative only to ensure  
21 collection of all sums due and their correct  
22 distribution under the Benefit Plan's terms.  
23 But not to take any position on whether those  
24 terms should be altered." Given that  
25 contractual agreement by Independent Fiduciary

43

1 Services, Inc., the party whose standing was  
2 denied in UAL Corporation, I would totally  
3 agree with the result in the UAL case, which  
4 is that that party had no basis for being  
5 heard on an 1113 motion on the merits. They  
6 performed a fully administrative function.  
7 Other Courts, where parties have agreed that  
8 the union is the sole bargaining unit, also  
9 have been appropriately limited in their  
10 standing under Section 1113.

11 Secondly, and more importantly, in  
12 connection with any issue regarding standing,  
13 the Court has to consider first and foremost  
14 the context of the matter before it. Here,  
15 the matter before me is a request by the  
16 debtors for authority to reject the various  
17 collective bargaining agreements under Section  
18 1113 of the Code, as well as authority to  
19 alter related benefits under Section 1114.

20 Those two statutes are clearly unusual  
21 provisions of the Code enacted by Congress to  
22 vary the normal rules for rejecting executory  
23 contracts under Section 365. In particular,  
24 Section 1113 lays out a construct that  
25 expressly encourages in various ways

44

1 collective bargaining, both before the hearing  
2 commences and during -- that is, after the  
3 hearing and up until the point that the Court  
4 rules. It also provides for an elaborate  
5 level of proof to establish that the agreement  
6 should be rejected or not.

7 In that context, where Congress has  
8 clearly set up a dynamic where the union and  
9 the debtor are directed to negotiate or act at  
10 their peril, it is not appropriate as found by  
11 the second UAL Corporation case to let other  
12 parties intrude upon the negotiations which  
13 was the specific result in UAL2 at 443 F3d.  
14 565. The one caveat being, I suppose, if the  
15 debtor, for some reason, laid down on the job  
16 in which case, I believe, some other party  
17 might well be authorized to pick up the  
18 mantle, which was in fact the holding in In Re  
19 Parrot Packaging Company, Inc., 42 BR 323 at  
20 330 (ND Ind. 1983).

21                   Secondly, I believe that with regard  
22   to the various elements that need to be shown  
23   to support rejection of a collective  
24   bargaining agreement, the focus should be on  
25   the debtors' case vis-a-vis the union and vice

45

1   versa.   Some of the objectors have argued that  
2   they could make their own case under the  
3   various factors required under Section 1113 to  
4   be shown before a collective bargaining  
5   agreement may be rejected, including,  
6   specifically, the tests that the modifications  
7   be necessary and that the proposal and the  
8   result be fair and equitable.

9                   I believe that that aspect of the  
10   litigation should first and foremost, and  
11   perhaps exclusively, be done by the debtor on  
12   one side and the union on the other.   However,  
13   having said that, I believe that the objectors  
14   each have a standing to be heard on the  
15   debtors' motion.   In this respect, ultimately,  
16   is a motion to reject and that is a decision  
17   that, in most cases and clearly in this case,  
18   is one that's out of the ordinary course and  
19   affects the rights of all of the parties in  
20   this case.   The official committees have

21 fiduciary duties to investigate and consider  
22 the debtors' decision to reject and to pursue  
23 a specific course in determining rejection --  
24 is the proper course of action here. As Mr.  
25 Rosenberg said, the creditors' committee has

46

1 properly conducted extensive due diligence on  
2 that decision and on the process and it has a  
3 right to be heard as does any party in  
4 interest on that decision. However, I believe  
5 that decision is justified vis-a-vis the  
6 estate, generally, and parties in interest,  
7 generally, on a business judgment standard  
8 under the Second Circuit's O'Ryan Pictures  
9 case and Lionell.

10 And that is the issue, I believe,  
11 that the objectors or those supporting the  
12 decision can weigh in on. It may be that they  
13 are entitled on that basis to submit evidence  
14 but necessarily it will be more of a limited  
15 nature, which is the bonafide basis for a  
16 decision at this time to reject the agreement  
17 or agreements.

18 That's how I harmonize Section  
19 1113(d) and 1109(b) in light of the principles  
20 and purposes of Section 1113. Whether it's an  
21 absolute statutory bar or more rather an

22 interest analysis coupled with my inherent  
23 power to manage the litigation in front of me,  
24 I think that's the proper result.  
25 Most of the objectors simply want to

47

1 preserve their right to comment having done  
2 their due diligence. Indeed, one of the  
3 objectors, I think, will drop out. That is,  
4 the ad hoc trade committee, now that they  
5 realize that their issue is not being  
6 determined in this motion, which is, again,  
7 simply one to seek permission to reject a  
8 collective bargaining agreement. Otherwise it  
9 doesn't establish the validity of their claims  
10 or their clients' claims.

11 The objectors who oppose the relief  
12 sought by the debtors here will have to decide  
13 whether and in what respect they want to  
14 present evidence and/or cross-examine  
15 witnesses. But, again, I will let them do so  
16 only insofar as it pertains to the debtors'  
17 business judgment to reject as opposed to all  
18 of the factors laid out in Section 1113.

19 So, Ms. Ceccotti, you can submit an  
20 order to that effect.

21 MS. CECCOTTI: Thank you, Your

22 Honor.

23 THE COURT: Okay. Now let me take a  
24 break just for a second. I -- just a moment --  
25 - I apologize to all of you who are standing.

48

1 Believe it or not, this is the largest  
2 courtroom we have in this building. We have  
3 arranged and we had believed that you'd be  
4 able to go there right away. For those of you  
5 who would rather sit and listen as opposed to  
6 stand and listen and watch, to go to another  
7 courtroom just down the hall to do that --  
8 unfortunately, one of my colleagues had an  
9 emergency hearing that he had to take this  
10 morning. That hearing is now over. So, if  
11 you want to rest your feet and listen as  
12 opposed to listen and watch, you can go down  
13 to Room 623 and follow this hearing from  
14 there. You're free to stand here, too, of  
15 course, but --

16 MS. CECCOTTI: Your Honor, in  
17 connection with your ruling and I know the  
18 Court will review the transcript with care, so  
19 I did want to note, in connection with the IFS  
20 case, there is a brief mention of the IFS  
21 position with respect to the rejection and  
22 they did intend to oppose. I just wanted to

23 note that. It is -- the contract issue that  
24 you raised is also mentioned in the opinion,  
25 but farther it does say that, based on their

49

1 duties vis-a-vis the plan, they intended to  
2 oppose the rejection.

3 THE COURT: Well, I agree. I just  
4 don't think they have any --

5 MS. CECCOTTI: Okay. That's fine.

6 THE COURT: I think they've given up  
7 their right to --

8 MS. CECCOTTI: That's fine. I just  
9 wanted to make sure that the Court understood  
10 that.

11 THE COURT: -- 'cause they were just  
12 on their agent.

13 MS. CECCOTTI: Right. That's fine.  
14 And there is also a very brief mention of  
15 1109(b) that I'm sure the Court has observed  
16 as well. Thank you.

17 MR. BUTLER: Okay. Your Honor, the  
18 remaining matter on the agenda is the  
19 principle matter. It is the debtors' motions  
20 under Sections 1113 and 1114 of the Bankruptcy  
21 Code authorizing rejection of the collective  
22 bargaining agreements and authorizing



23 modification of retiree welfare benefits.  
24 It's found at Docket No. 3035. We have filed  
25 an agenda that has all of the pleadings

50

1 summarized, as is the Court's practice here.

2 Your Honor, we're here before the  
3 Court seven months after commencing these  
4 Chapter 11 cases.

5 I'm sorry. Did you want to take a  
6 break, Your Honor, now?

7 THE COURT: No. I just want to take  
8 a break to give people a chance to leave if  
9 they wanted to go to the other -- down the  
10 hallway. Sorry.

11 MR. BUTLER: As I was saying, Your  
12 Honor, we're hear before the Court seven  
13 months after commencing these Chapter 11  
14 reorganization cases back on October 8th, 2005  
15 to commence a contested hearing on the  
16 debtors' motion made pursuant to Sections 1113  
17 and 1114 of the Bankruptcy Code.

18 By agreement at a meet and confer  
19 conference amongst the parties with timely-  
20 filed objections seeking to participate at the  
21 hearing, the order of opening statements and  
22 suggested time limits are as follows: the  
23 debtors' as movants, 60 minutes; the

24 creditors' committee, 10 minutes; General  
25 Motors, 10 minutes; the UAW, 30 minutes; the

51

1 IUE, 25 minutes; the USW, 15 minutes; the  
2 IAM/IBEW, those two unions, 15 minutes,  
3 represented by the same counsel; the USOE, 15  
4 minutes; Appaloosa, 20 minutes; and Wilmington  
5 Trust, 10 minutes. In addition, Your Honor,  
6 in light of the equity committee's  
7 appointment, we've added 10 minutes for the  
8 equity committee at the conclusion of that  
9 order and, if it pleases the Court, we'll  
10 proceed in accordance with the meet and confer  
11 agreement.

12 THE COURT: Okay. That's fine. I  
13 may shorten people if they're going over the  
14 same ground, but that's fine.

15 MR. BUTLER: Your Honor, when we  
16 were before this Court at our first day  
17 hearings, we told the Court that our Chapter  
18 11 reorganization was required first, because  
19 of our labor agreements, which have caused an  
20 enormous increase in Delphi's labor and  
21 benefit costs, including the legacy retirement  
22 liabilities arising under those agreements,  
23 and have limited Delphi's ability to respond

24 economic changes by selling or closing  
25 facilities or laying off excess people. We

52

1 told Your Honor the second reason was because  
2 of competitive conditions in the U.S.  
3 automotive market. Those conditions greatly  
4 reduced sales and profitability of Delphi's  
5 largest customer and former parent, General  
6 Motors Corporation, and it resulted in reduced  
7 business and greater pricing pressure for  
8 Delphi. And finally, we told Your Honor about  
9 rapidly rising commodity costs which Delphi is  
10 unable to pass along to its OEM automotive  
11 customers.

12 By this motion, the debtors seek  
13 authority to reject pursuant to 1113(c)  
14 various collective bargaining agreements with  
15 the UAW, IUE-CWA, the USW, the IAM, IBEW and  
16 the IUOE. Upon ten days calendar notice to  
17 the Court and the unions, or, alternatively,  
18 upon entry of the rejection order, and to  
19 modify pursuant to 1114(g), the debtors'  
20 obligation is to provide medical and life  
21 insurance benefits for hourly retirees  
22 effective October 1, 2006.

23 Your Honor, a word about pensions.  
24 The evidence will demonstrate the Delphi

25 Section 1113 and 1114 proposals provide only

53

1 for the freezing of the accrual of benefits  
2 and not determination of Delphi's hourly  
3 pension plans. The same is true for Delphi's  
4 salary pension plans. Assuming that Delphi  
5 can devise a workable solution to its current  
6 pension situation, whether it is to stretch  
7 out pension payments or develop an alternative  
8 solution, Delphi is committed to using the  
9 earning power of its reorganized global  
10 enterprise to fund its pension obligations in  
11 toto. This alone distinguishes Delphi from  
12 most other large labor transformation cases  
13 which have involved the loss of pensions, as  
14 well as material changes to labor agreements  
15 and other retiree benefits.

16 As for other retirement benefits,  
17 Delphi Section 1114 relief seeks to substitute  
18 individual retirement medical accounts in lieu  
19 of Delphi's existing obligations for those  
20 retirees and future eligible retirees who do  
21 not have the benefit of a GM benefit  
22 guarantee. However, for the remainder of  
23 Delphi's retirees and future eligible  
24 retirees, all of whom are protected by the GM

25 benefit guarantee and should not receive any

54

1 diminution in their benefits but will just  
2 receive payments from GM rather than Delphi,  
3 Delphi proposes to terminate its continuing  
4 obligations altogether.

5 As the Court is aware, Delphi does  
6 not seek relief on an interim basis under  
7 Section 1113(e) of the Bankruptcy Code.  
8 Section 1113(e) is the only provision of the  
9 statute that carries with it judicial  
10 inquiries relating to whether the relief  
11 sought is essential to the continuation of the  
12 debtors' businesses --

13 THE COURT: I'm sorry. Can I  
14 interrupt you because I think you're -- I want  
15 to go back to the pension point for a second  
16 because I think this is an issue that will  
17 come up later. Your proposal does not seek to  
18 do more than freeze the pension. However,  
19 there's a caveat in it, right? That if, in  
20 fact, more relief is necessary, you would seek  
21 to terminate the pension. Is that right?

22 MR. BUTLER: Your Honor, that caveat  
23 was in it but our position has been, and we  
24 believe -- we think we've communicated it to  
25 the unions, that had they accepted the

1 proposals we presented them, the proposals  
2 would provide for freezing, not for a  
3 termination. We'd have to come back to the  
4 Court under at least two separate parts of the  
5 statutes. One would be under 1113 and,  
6 secondly, we'd have to come back under the  
7 ERISA statute and go through distress  
8 termination litigation.

9 THE COURT: See that's -- but that's  
10 -- that was where I was leading. I thought  
11 that's how I understood your proposal but  
12 there's a footnote in your reply that says,  
13 and maybe this is just ambiguous, "if however  
14 the Court grants the Section 1113 relief  
15 Delphi seeks in its motion, Delphi would only  
16 be required to seek relief under ERISA." That  
17 seemed to be contradicted by the sentence that  
18 precedes it which says that you'd be seeking  
19 relief under both 1113 and ERISA. But, I just  
20 want to make sure. Are you seeking today  
21 authority if, for some reason, it becomes  
22 necessary to terminate the pension plan or is  
23 that something that would be left for another  
24 day?

25 MR. BUTLER: That would be left for

1 another day, Your Honor.

2 THE COURT: Okay. All right.

3 MR. BUTLER: And that's the position  
4 we've communicated.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, I was  
7 talking, I think, about 1113(e). And, as the  
8 Court's aware, Delphi does not seek any  
9 interim relief under Section 1113(e). Section  
10 1113(e) is the only provision of the statute  
11 that carries with it judicial inquiries  
12 relating to whether the relief sought is  
13 essential to the continuation of the debtors'  
14 businesses and whether irreparable harm,  
15 irreparable damage to the estate, would be  
16 caused but for the relief sought. These  
17 inquiries are not relevant to today's hearing.

18 We're asking for the relief in the  
19 motion because the evidence will demonstrate  
20 that Delphi has complied with requirements of  
21 Section 1113 and 1114, including the fact that  
22 we will prove by a preponderance of the  
23 evidence that Delphi's unions have refused to  
24 accept the proposals made to them without good  
25 cause and Delphi's proposals are necessary to

1 Delphi's reorganization.

2           The evidence will demonstrate that  
3 without transforming Delphi's North American  
4 operations to be competitive in North America,  
5 let alone globally, these debtors cannot  
6 reorganize and these businesses will fail. No  
7 where in the union objections is this  
8 fundamental precept challenged or to the  
9 union's claim that Delphi's collective  
10 bargaining agreements are competitive in the  
11 automotive supply industry.

12           We ask for this relief now because  
13 despite the passing of three court deadlines  
14 in December 2005, February 2006 and March  
15 2006, that were imposed at Delphi's request  
16 and more than a billion dollars in losses and  
17 hundreds of millions of dollars of cash  
18 consumed by losing operations since October  
19 8th, there is no consensual labor  
20 transformation agreement among the parties and  
21 there has not been a single comprehensive  
22 proposal or counteroffer to Delphi's multiple  
23 proposals from Delphi's major unions,  
24 including the UAW, the IUE, CWA or USW.

25           Essentially, we believe our unions



1 concede that there is a problem but without a  
2 consensual solution, Delphi must be empowered  
3 to change the status quo and implement  
4 solutions.

5           Indeed, even though Delphi's March  
6 31st motion, Your Honor, stated clearly that  
7 Delphi continued to be focused in reaching a  
8 consensual solution with all of its unions and  
9 would proceed with this motion only if the  
10 parties could not reach consensual resolution  
11 by May 9th, after nearly seven weeks since the  
12 filing, there still remains no consensual  
13 labor transformation agreement among the  
14 parties or comprehensive proposal or  
15 counterproposal from Delphi's major unions.  
16 Not a single one.

17           That having been said, I want to  
18 repeat the assurances that Delphi included in  
19 its March 31st motion about what Delphi would  
20 do if the company obtains the relief requested  
21 in the motion. Because the company continues  
22 to seek a consensual resolution, Delphi would  
23 not immediately impose all the relief sought.  
24 That, of course, Your Honor, is not fatal to  
25 our -- the relief sought in the motion. It

1 simply describes to the Court Delphi's present  
2 intention about how it would impose relief if  
3 it was given the authority to do so.

4           Instead, Delphi's intention is to  
5 continue working with its unions towards a  
6 consensual resolution that would make Delphi's  
7 continuing North American operations  
8 competitive here in North America and would  
9 contribute to making Delphi competitive in the  
10 global marketplace.

11           That being our preference and our  
12 preferred path does not change the  
13 congressional designs of 1113 and 1114, which  
14 may be used on very short notice in the life  
15 of a Chapter 11 debtor and well in advance of  
16 any plan of reorganization process. It is  
17 simply not the case that Delphi can or should  
18 be prevented from pursuing, obtaining, and, if  
19 necessary, implementing statutory relief to  
20 address the very real barriers to successful  
21 reorganization that the debtors believe that  
22 the evidence will show are posed by  
23 uncompetitive collective bargaining agreements  
24 and the roadblocks are rationalizing Delphi's  
25 product lines and our plant portfolio.

1                   Your Honor, without affecting in any  
2   way the merits of Delphi's motion, it is  
3   fundamentally important to acknowledge in this  
4   opening statement the very real impact of  
5   Delphi's labor transformation reorganization  
6   on many people and on many communities in  
7   which Delphi operates.

8                   I speak of transformation more  
9   generally rather than the motion itself being  
10   heard today because one way or another there  
11   will be fundamental change. Whether it is  
12   transformation and reorganization, which is  
13   the goal of Delphi's Chapter 11 cases and  
14   today's motion, or something much less  
15   palatable like a sales process and  
16   liquidation, depends on whether many of us in  
17   this courtroom today can continue to navigate  
18   towards a consensual transaction at some point  
19   soon.

20                  Whatever our course, there will be  
21   fundamental change. Delphi's current  
22   uncompetitive labor arrangements, which are  
23   basically OEM-based compensation rather than  
24   Tier One supplier-based cost structures,  
25   ignores the competitive realities within North

1 America, as well as global competition. And  
2 it will not. Indeed, this structure cannot  
3 survive through the next winter.

4 That stark reality has been, and  
5 will continue to be, incredibly painful to  
6 people and communities across the industrial  
7 heartland where there is a concentration of  
8 people that will not reap the rewards promised  
9 to them a generation ago and communities will  
10 have to readjust to the loss of major  
11 industry.

12 Though my immediate family now lives  
13 in Chicago, I am a native son of Michigan. My  
14 grandparents and parents are buried in  
15 Detroit's cemeteries south of Eight Mile. All  
16 of my siblings and their families live in  
17 southeast Michigan. In addition to being  
18 neighbors and citizens, my brothers and  
19 sisters and their spouses are teachers, real  
20 estate brokers and small business operators.  
21 They personally experience and tell me about  
22 the havoc the current state of the automobile  
23 industry is causing to the children in their  
24 classrooms, the value of their homes, the  
25 profitability of their businesses and their

1 communities.

2           For 50 years, I have spent parts of  
3 my summer in northeast Michigan with lake  
4 friends from cities including Flint and  
5 Saginaw. As other Michiganders, I have driven  
6 by the Saginaw Steering plant near the  
7 Zilwaukee Bridge hundreds of times headed  
8 north. What you observe and what are told to  
9 you and what you sense and you feel is real  
10 and vivid pain across Michigan and across  
11 other affected states.

12           During the presentation of the  
13 unions' opposition cases, we will all sit in  
14 this courtroom together and listen to impact  
15 witnesses who will talk about the pain and the  
16 suffering and the intolerable choices that  
17 confront their friends and their colleagues  
18 and themselves. We should listen and be  
19 empathetic to them because, as human beings,  
20 it is the right thing to do.

21           But as the evidence will  
22 demonstrate, and as I will address in closing  
23 arguments, there is no magic balm that makes  
24 competition go away. There is no magic balm  
25 that takes us back to a high wage

1 manufacturing environment year long gone by.  
2 There is no magic balm that permits a supplier  
3 to pay OEM-based compensation.

4               Simply stated, Delphi must become  
5 competitive to survive. However mindful the  
6 impact and implementation of its  
7 transformation plan will have on some of its  
8 stakeholders, including its employees and  
9 communities, ultimately, Delphi's  
10 transformation actions will result in a  
11 stronger company with future global growth  
12 opportunities. In the meantime, Delphi will  
13 continue to examine and will continue to  
14 incorporate into its transformation plan  
15 elements that mitigate some of the pain. The  
16 evidence will demonstrate this effort to date  
17 through the company seeking to retain and pay  
18 accrued pension obligations, through  
19 implementing special attrition programs and  
20 even through pursuing the GM consensual  
21 scenario which provides a longer  
22 transformation period during which subsidized,  
23 not fully competitive wages, continue to be  
24 paid.

25               With respect to the transformation

1 plan, Your Honor, the evidence will

2 demonstrate that during the fourth quarter of  
3 2005, Delphi identified to GM, its unions and  
4 its creditors' committee five key areas that  
5 Delphi would need to focus on to complete its  
6 restructuring process.

7 First, Delphi said it needed to  
8 modify its labor agreements to create a  
9 competitive arena in which to conduct business  
10 going forward.

11 Second, Delphi said it needed to  
12 conclude its negotiations with General Motors  
13 to finalize its financial support for the  
14 legacy and labor cost Delphi currently carries  
15 and to ascertain GM's business commitment to  
16 Delphi going forward.

17 Third, Delphi said it needed to  
18 streamline its product portfolio to capitalize  
19 on its world-class technology and market  
20 strengths and make the necessary manufacturing  
21 alignment with its new focus.

22 Fourth, Delphi said it needed to  
23 transform its salaried work force to ensure  
24 that its organizational cost structure was  
25 competitive and aligned with its product

1 portfolio and manufacturing footprint.

2 And finally, as I mentioned earlier,  
3 Delphi needed to devise a workable solution to  
4 its current pension situation, whether it is  
5 to stretch out pension payments or develop an  
6 alternative solution.

7 Your Honor, I spoke a few minutes  
8 ago about the Court's scheduling orders.  
9 These orders were entered from time to time at  
10 the debtors' request. But they importantly  
11 bear on many of the objections that have been  
12 filed. As part of its first day hearings,  
13 this Court granted relief sought by Delphi and  
14 entered a scheduling order regarding Sections  
15 1113 and 1114, which set three important  
16 deadlines relevant to all parties in interest  
17 in these cases back last fall.

18 By October 21st, 2005, Delphi was to  
19 serve the international unions with Section  
20 1113 labor proposals and relevant information.  
21 The evidence that this was accomplished.

22 By November 18th, 2005, Delphi was  
23 to serve authorized representatives of  
24 retirees with Section 1114 retirement benefit  
25 modifications and relevant information. The

1 evidence will demonstrate that this was  
2 accomplished and included a modified Section



3 1113 proposal based on the competitive  
4 benchmark scenario.

5 By December 19th, 2005, absent a  
6 consensual deal, Delphi was to file its  
7 1113/1114 motion. This was not accomplished.  
8 Indeed, in response to demands from its major  
9 unions and in order to facilitate discussions  
10 with its unions, Delphi publicly withdrew the  
11 November 18th competitive benchmark proposal  
12 as a formal proposal, and at Delphi's request,  
13 this Court twice amended the Section 1113/1114  
14 motion filing deadline from December 19th,  
15 2005 to February 17th, 2006 and, ultimately,  
16 to March 31, 2006 in order to provide an  
17 additional three and a half months for the  
18 pursuit of a consensual transaction by Delphi  
19 and its unions.

20 At around the same time, Delphi's  
21 largest customer and its former parent,  
22 General Motors, agreed to provide some  
23 financial support to the debtors in the form  
24 of a waiver of future pricedowns. The  
25 evidence will show that General Motors engaged

1 Delphi and its largest union, the UAW, in  
2 bilateral and tri-party discussions to try to

3 find a consensual resolution of Delphi's labor  
4 transformation requirements which might  
5 involve GM's financial participation.

6               These discussions included months of  
7 meetings with the UAW and periodic meetings  
8 with other unions regarding the framework of a  
9 transformation plan that could provide wages  
10 that were higher than the competitive  
11 benchmark scenario but only to the extent  
12 subsidized by GM which, by the way, has not  
13 itself agreed to such subsidies. These  
14 frameworks discussions led to Delphi's  
15 delivery of the GM consensual scenario and  
16 related proposals in March.

17               These discussions also led to a  
18 negotiated special attrition program for UAW  
19 represented employees which the Court approved  
20 on April 7th, 2006. As important a first step  
21 as the special attrition program is, because  
22 it provides additional options to workers who  
23 face difficult choices, the program is a  
24 voluntary program that involves the payment of  
25 additional incentives without any

1 transformation of collective bargaining  
2 agreements or retiree benefits. And,  
3 unfortunately, that first step has not yet led

4 to a consensual restructuring transaction or  
5 even a framework for such a transaction. Nor  
6 have the debtors received as of today a single  
7 comprehensive proposal or counteroffer from  
8 any of the debtors' major unions.

9 And so, Your Honor, this hearing  
10 begins 39 days after Delphi filed its motion  
11 pursuant to the last scheduling order. Your  
12 Honor, Delphi's direct case will consist of 13  
13 witnesses presented by the debtors over the  
14 next several days. Pursuant to meet and  
15 confer agreements with the objectors, the  
16 debtors' direct testimony will be presented  
17 through declarations and supplemental  
18 declarations, as well as documentary exhibits.

19 The objectors have the option of  
20 admitting their declarations or proceeding  
21 with live testimony. Live testimony is  
22 limited to the material covered in the  
23 declarations plus development since the date  
24 of the declarations and the parties will have  
25 the parties will have the opportunity to make

1 those decisions as we go forward. And we  
2 understand most of the unions are going to put  
3 on live testimony.

4                   The debtors and the objectors  
5     submitted last week joint trial books  
6     consisting of 188 designated exhibits, which  
7     has subsequently had additional exhibits  
8     designated through, I believe, Exhibit No.  
9     231, as of this morning. There will continue  
10    to be some additional exhibits designated by  
11    the parties, pursuant to meet and confer  
12    protocol, and we will address the admission of  
13    the exhibits into the evidentiary record at  
14    the conclusion of the direct opposition and  
15    rebuttal cases.

16                  Each of Delphi's witnesses is  
17    present in the courtroom today and will be  
18    available for cross and re-direct  
19    examinations. By agreement of the meet and  
20    confer parties, the order of cross-examination  
21    will be the union objectors, Appaloosa and  
22    Wilmington Trust. Also by agreement, at the  
23    time when the debtors present a witness for  
24    cross-examination and prior to the  
25    commencement, Mr. Kennedy, counsel to the

70

1     IUE/CWA, will rise and announce the particular  
2     order of cross-examination by union objectors  
3     of that witness.

4                  With respect to the issue of

5 preserving confidentiality and protective  
6 orders entered in these cases in accordance  
7 with Section 1113(d)(3), as witnesses are  
8 examined, the debtors have asked that counsel  
9 make their best efforts to maintain the  
10 confidentiality of confidential information by  
11 asking questions of witnesses in a manner that  
12 is informative to the witness and to the Court  
13 but not necessarily to the general public.  
14 Given the issues at stake, and the public's  
15 interest in these proceedings, it is the  
16 debtors' strong preference that the issue of  
17 confidentiality be handled this way rather  
18 than through closing portions of the hearing.  
19 However, the debtors have reserved the right  
20 to request a closed hearing at specific times  
21 should that need arise.

22 At this time, Your Honor, I'd like  
23 to introduce each of Delphi's witnesses in the  
24 plan and the planned order of our direct case,  
25 which does remain subject to adjustment, and

71

1 briefly on the subject area of their  
2 testimony.

3 When I call the name, I'd just like  
4 them to stand briefly so the Court can

5 identify them:

6                   Mr. Resnick? David Resnick is a  
7 managing director at Rothschild, Inc. He has  
8 the responsibility for the firm's global  
9 restructuring practice. Mr. Resnick will  
10 testify to an overview of the automotive  
11 industry, to Rothschild's work on behalf of  
12 Delphi, to the initial development of four  
13 restructuring alternatives last summer, also  
14 referred to as Scenarios A, B, C and D, to the  
15 development of the steady state scenario as  
16 the starting point to develop a restructuring  
17 plan, to the competitive benchmark scenario  
18 issued in connection with last fall's  
19 proposals, to the GM consensual scenario  
20 issued in connection with proposals that were  
21 delivered in March 2006, and finally, Mr.  
22 Resnick will provide a critical appraise and  
23 rebuttal of Mr. Millstein's declarations  
24 submitted on behalf of the UAW.

25                   Our second witness is Mr. Kevin

72

1 Butler. Mr. Butler is the vice-president  
2 human resource management of Delphi  
3 Corporation and is responsible for oversight  
4 of Delphi's worldwide human resources. Mr.  
5 Butler will testify to Delphi's historical

6 pattern bargaining practices with its unions,  
7 to meetings held with its major unions in the  
8 second, third and fourth quarters of 2005, as  
9 well as meetings to date this year. He will  
10 testify to information provided to the unions,  
11 to the competitive roadblocks caused by the no  
12 sale or closed provisions of Delphi's  
13 collective bargaining agreements, to the  
14 insufficiency of existing new hire agreements  
15 with its major unions and to the anticipated  
16 impact of special attrition programs  
17 negotiated with the UAW and intended to be  
18 negotiated with Delphi's other unions. Mr.  
19 Butler will also testify to Delphi's 1113 and  
20 1114 proposals served on October 20th and  
21 21st, 2005 and November 17th, 2005 relating to  
22 the competitive benchmark scenario and the  
23 formal withdrawal of that proposal on December  
24 19th, 2005. He will speak, Your Honor, to  
25 Delphi's 1113 and 1114 proposal served in

73

1 March 2006 relating to the GM consensual  
2 scenario and, if not agreed to by GM, the  
3 competitive benchmark scenario. Mr. Butler's  
4 testimony also includes Delphi's use of  
5 supplier-based competitive analyses to

6 determine market wage rate and benefit  
7 packages, Delphi's neutral relief prior to  
8 September 2007 and, finally, he'll speak to  
9 certain matters relating to salaried employees  
10 including the pension plan freeze of the  
11 salaried employee program as of January 1,  
12 2007.

13 Our third witness, Your Honor, is  
14 Mr. Michael L. Walkter. Mr. Walkter is the  
15 William B. Johnson professor of law and  
16 economics and a co-director of the Institute  
17 for Law and Economics at the University of  
18 Pennsylvania. He has presented expert  
19 testimony on wage and benefit comparability  
20 issues on numerous occasions and he will  
21 testify regarding his expert evaluation of the  
22 current comparability of Delphi's wage and  
23 benefits and his assessment of the wage  
24 proposals that the company has made for its  
25 unionized employees, including Dr. Walkter's

74

1 reviews on the reasons for the company's --  
2 or, excuse me -- the reasons for automotive  
3 companies' financial troubles in the industry,  
4 the comparability principles and his choice of  
5 comparison groups, the characteristics of  
6 Delphi's work force and comparably skilled



7 workers and production workers economy-wide in  
8 the automotive parts industry, the implication  
9 of Delphi's historical quit rates and,  
10 finally, Dr. Walkter will testify to the  
11 affect of Delphi's wage and benefit proposals  
12 and their relationship to market levels.

13 Our fourth witness, Your Honor, will  
14 be Stephen Gebiuh. Mr. Gebiuh is executive  
15 director, benefits and policy of Delphi  
16 Corporation. He is responsible for directing  
17 all activities regarding Delphi's employee  
18 benefit plans and programs, as well as  
19 Delphi's U.S. salaried policies, procedures,  
20 practices and administrative guidelines. Mr.  
21 Gebiuh will testify to proposed modifications  
22 to benefits currently provided in the debtors'  
23 collective bargaining agreements. He will  
24 testify to proposed modification to retiree  
25 benefits. He will testify to proposed

75

1 modification to the hourly pension program.  
2 And finally, he will deal with incremental  
3 benefits included in the GM consensual  
4 proposal, including retiree medical accounts  
5 and incremental severance payments which are,  
6 in the proposal, 70,000 to 140,000 per person,

7 based on seniority, as well as the prior  
8 reduction of salaried personnel benefit  
9 packages to competitive norms which have  
10 resulted in the value of salaried compensation  
11 of benefits being reduced by more than 15  
12 percent since 1999.

13 Our fifth witness, Your Honor, is  
14 Mr. Keith Williams who will join us this  
15 afternoon. He is employed by Watts & Watt  
16 worldwide and is the enrolled actuary for  
17 Delphi's defined benefit programs. Mr.  
18 Williams will testify to various matters  
19 relating to the hourly rate employee pension  
20 plan, including liability measurements,  
21 primary reasons for increased unfunded pension  
22 obligations, projections of future minimum  
23 pension funding obligations and the impact of  
24 pension relief, including pension waivers, and  
25 various matters relating to hourly and

76

1 salaried retiree health care measurements,  
2 primary reasons for the increased and  
3 projected benefit obligations and the affect  
4 of the elimination of OPEB on October 1, 2006,  
5 as well as Delphi's health care trend rate.

6 Our sixth witness is Mr. John  
7 Schien. As Your Honor knows, Mr. Schien is

8 vice-president and chief restructuring officer  
9 at Delphi and has responsibility as a chief  
10 accounting officer and comptroller as well.  
11 He will testify to an overview of Delphi's  
12 businesses, including its three business  
13 sectors, and historical financial performance,  
14 the causes of Delphi's current financial  
15 condition, Delphi's inability to successfully  
16 reorganize without the changes to its labor  
17 agreements, Delphi's restructuring scenarios,  
18 which include the steady state baseline from  
19 which both the competitive benchmark and GM  
20 consensual scenarios were constructed,  
21 Delphi's five key elements of its  
22 transformation, which I addressed earlier, the  
23 downside risks to Delphi's transformation  
24 plan, the efficiency of the debtors' responses  
25 to union information requests, the fair and

77

1 equitable treatment of stakeholders other than  
2 the unions in connection with the Section 1113  
3 and 1114 proposals and information regarding  
4 Delphi's improved 2006 financial performance,  
5 including the factors that have contributed to  
6 that performance, as well as the company's  
7 assessment that there is no material change in

8 its need for relief under Section 1113/1114.  
9 Mr. Schien finally will speak to concessions  
10 obtained by the company from its suppliers, as  
11 well as the company's assessment of the affect  
12 of the UAW special attrition program and the  
13 GM contract rejection motion on this process.

14 Delphi's seventh witness will be Mr.  
15 Mark Weber. Mr. Weber is executive vice-  
16 president, operations, human resource  
17 management and corporate affairs at Delphi  
18 Corporation. As part of the company's  
19 transformation plan and SGNA realignment, Mr.  
20 Weber will take responsibility for the  
21 company's shared services organization. He  
22 will testify to the following: first, he will  
23 testify to the 1999 spin-off from GM,  
24 including the rationale for that transaction,  
25 the assumptions and risks in the spin-off as

78

1 recognized by GM and Delphi, the mirror  
2 agreement with the UAW executed in 1999 that  
3 committed Delphi to mirror the GM patterned  
4 labor agreements until September 2007 and thus  
5 continue OEM-based, and not supplier-based,  
6 collective bargaining agreements. Mr. Weber  
7 will speak to the GM benefit guarantee, as  
8 well as the level of salaried and management

9 compensation and benefits and the need to  
10 achieve market-based compensation for salaried  
11 workers. He will address the planned  
12 elimination of about 5,250 of Delphi's 14,300  
13 U.S. salaried management positions in  
14 connection with the implementation of Delphi's  
15 transformation plan, as well as the layered  
16 implementation of SGNA cost reduction programs  
17 that are designed to achieve approximately 450  
18 million dollars per year when fully  
19 implemented.

20 Our eighth witness will be Mr.  
21 Robert Gerling. Mr. Gerling is labor director  
22 of Thermal & Interior of Delphi Corporation.  
23 His responsibilities include labor  
24 negotiations with the UAW, IUE and the USW.  
25 Since the Chapter 11 filing, Mr. Gerling has

79

1 been primarily responsible for negotiating  
2 with Delphi's Local unions of the IAM, about  
3 45 employees, the IBEW, about 60 employees,  
4 and the IUOE, about 19 employees. Mr. Gerling  
5 will testify to meetings with the IUOE  
6 Columbus and Rochester Locals regarding  
7 Delphi's three proposals, meetings with the  
8 IAM and IBEW regarding Delphi's three

9 proposals, receipt of a counterproposal from  
10 the IBEW and the IAM on April 20th and 21st  
11 and the status of negotiations regarding  
12 potential special attrition programs with  
13 those unions.

14 Our ninth witness will be Mr. Darryl  
15 Kid. Mr. Kid is executive director of labor  
16 relations of Delphi Corporation and is  
17 responsible for negotiating the national  
18 agreement with the UAW and overseeing the  
19 Local agreements with the IAM, IBEW and IUOE.  
20 Mr. Kid will testify to information sharing  
21 procedures and processes, including Delphi's  
22 virtual data room and the status of Delphi's  
23 response to over 600 individual data requests  
24 from the unions, as well as provisions of  
25 Delphi's collective bargaining agreements that

80

1 relate to wages, vacation and holiday  
2 entitlements and job security. And finally,  
3 Mr. Kid will testify regarding Delphi's  
4 special attrition program with the UAW.

5 Our tenth witness is Bernard J.  
6 Quick. Mr. Quick is a director of labor  
7 relations of Delphi Corporation and is  
8 responsible for negotiating and overseeing the  
9 National and Local agreements of the IUE/CWA

10 and the USW. Mr. Quick will testify to  
11 meetings, negotiations with the IUE and USW,  
12 Delphi's custom of pattern bargaining with the  
13 IUE and USW following UAW pattern agreements  
14 and the insufficiency of new hire agreements  
15 that exist with the IUE and CWA, which provide  
16 for competitive new hire rates but require  
17 that employees grow traditional wages.  
18 Finally, Mr. Quick will testify to provisions  
19 of Delphi's collective bargaining agreements  
20 that relate to wages, vacation and holiday  
21 entitlements, job security, no sale or closure  
22 provisions, successorship, outsourcing and  
23 subcontracting.

24 Our last three witnesses, Your  
25 Honor, are financial advisor witnesses. The

81

1 eleventh witness is William R. Shaw. Mr. Shaw  
2 is a director at Rothschild, Inc. During the  
3 1113 and 1114 process, Mr. Shaw was primarily  
4 responsible for coordinating the debtors'  
5 information sharing relationship with Lazard,  
6 Ltd., financial advisors to the UAW and will  
7 testify to the information sharing process  
8 with the UAW and rebuttal allegations made by  
9 the UAW.

10                   Our twelfth witness is James K.  
11   Guleamo. Mr. Guleamo is a managing director  
12   of FTI Consulting, Inc. and during the  
13   1113/1114 process, he was primarily  
14   responsible for coordinating the debtors'  
15   information sharing relationship with Shannon  
16   Capital Partners, financial advisors to  
17   IUE/CWA and will testify to the information  
18   sharing process with that union in rebuttal  
19   allegations made by the IUE/CWA.

20                   The debtors' final witness, Your  
21   Honor, will be Mr. Randall Eisenberg. Mr.  
22   Eisenberg is a senior managing director of FTI  
23   Consulting, Inc. and is generally responsible  
24   for FTI's overall engagement relationship with  
25   the debtors. Mr. Eisenberg will testify

82

1   regarding Delphi's transformation plan,  
2   including the essential element of labor  
3   transformation, the lack of material or  
4   sufficient impact of the special attrition  
5   plan on Delphi's transformation plan  
6   requirements, even if those plans are  
7   successfully implemented with all of our  
8   unions and the status of the debtors' short-  
9   term and long-term liquidity position without  
10   successful transformation of its business.



11 Mr. Eisenberg will also testify to the  
12 adequacy of information provided at certain of  
13 Delphi's unions, to the inadequacy of plant by  
14 plant proposals to successfully implementing a  
15 reorganization of the debtors' businesses and  
16 finally, the inadequacy of other savings  
17 measures, be they the pending SGA initiatives  
18 or the pending GM contract rejection motion to  
19 successfully implementing a plan of  
20 reorganization in these cases.

21 In summary, Your Honor, there are  
22 four principle areas where Delphi's motions  
23 has been challenged by its unions: good faith  
24 bargaining, information sharing, financial  
25 projections in need of the company and the

83

1 legitimacy of the underlying competitive wage  
2 comparison study, which is the basis for the  
3 labor wage proposals. As to each of these  
4 points, insofar as they relate to the required  
5 elements of Section 1113/1114 relief, Delphi's  
6 witnesses will carry its burden of proof, as  
7 I've just outlined.

8 Your Honor, the evidence will  
9 demonstrate that Section 1113/1114 relief is  
10 necessary for reorganization and that Delphi

11 cannot wait until 1997 -- excuse me, until  
12 2007. The objectors argue that the motion is  
13 premature because we must all step to the  
14 sidelines and wait and see what the cost  
15 savings from the special attrition programs or  
16 the GM contract rejection motion, or whether  
17 Delphi's first quarter financial performance  
18 will continue.

19           The evidence will demonstrate that  
20 regardless of whether Delphi is able to  
21 realize maximum savings through any of these  
22 mechanisms, the company will still lose  
23 billions of dollars. More importantly, the  
24 evidence will demonstrate that Delphi's  
25 failure to become competitive in North

84

1 America, as well as globally, will not only  
2 jeopardize long-term relationships with GM,  
3 but also with the balance of the OEM community  
4 worldwide.

5           The unions' fact witnesses  
6 declarations do not challenge Delphi's  
7 competitive data and their experts do little  
8 but ask questions without producing  
9 alternative proposal or analysis that would  
10 weave rebut Delphi's evidence that Delphi  
11 cannot continue to pay a substantial wage

12 premium to its hourly workers in a highly  
13 competitive auto parts market.

14           The unions also do not appear to  
15 challenge Delphi's need for flexibility to  
16 respond to the competitive market by  
17 affordably reducing the work force and selling  
18 or closing businesses. Delphi's evidence will  
19 demonstrate that the non-wage rate  
20 modifications of Delphi's proposals are as or  
21 more important than the wage rates and have  
22 not been countered by the unions.

23           Similarly, Your Honor, the evidence  
24 will demonstrate that the notion that Delphi  
25 can wait until September 2007 and simply

85

1 implement its proposals at that time is  
2 incorrect. Putting aside the labor loss  
3 statutory scheme that would require Delphi to  
4 maintain a status quo throughout the 2007  
5 bargaining process, the evidence will  
6 demonstrate that waiting until the expiration  
7 of collective bargaining agreements is not a  
8 solution for this company.

9           Your Honor, Delphi will carry its  
10 burden of proof in this contested hearing that  
11 the debtors have complied with all relevant

12 legal requirements applicable to these debtors  
13 in this Court under Sections 1113 and 1114.  
14 The evidence will demonstrate that the  
15 debtors' requested relief is necessary for  
16 reorganization and that there has been more  
17 than sufficient time, information and  
18 opportunity for bargaining. The evidence will  
19 demonstrate that the debtors' long-term  
20 liquidity profile, which is the only relevant  
21 profile under the necessity for reorganization  
22 test, especially since Section 1113(e) is not  
23 implicated in this motion, will not permit the  
24 company to reorganize without the relief  
25 requested. Thank you.

86

1 THE COURT: Okay.

2 MR. ROSENBERG: Your Honor, I will  
3 not take the Court's time at this juncture. I  
4 know Your Honor has read the papers. I would  
5 simply comment that in response to Ms.  
6 Ceccotti's point that evidently we only did  
7 due diligence with the debtor, she is correct.  
8 The debtor was the party who cooperated with  
9 due diligence.

10 MR. SIMON: Good morning, Your  
11 Honor. Cohen, Weiss & Simon for the United  
12 Auto Workers. Before I get to my formal

13 remarks, I have two preliminary matters that  
14 this sort of generated by your ruling on the  
15 standing issues and one raised by your  
16 colloquy with Mr. Butler regarding the pension  
17 footnote.

18 First, to seek guidance from the  
19 Court as to when it will be appropriate for  
20 parties other than the debtor and the union to  
21 either submit evidence or otherwise  
22 participate in connection with the business  
23 judgment issue, as I understand, and we've  
24 argued this extensively and I'll turn to it in  
25 my formal remarks, the company seeks in this

87

1 motion authority to reject the contract which  
2 they would not exercise until after the  
3 Court's order and only upon ten days notice at  
4 some point, presumably, to the unions and to  
5 the Court. Is it the Court's view that the  
6 debtors' decision to seek authority, the  
7 matter before us now, is a matter as to which  
8 their business judgment is subject to inquiry  
9 by the others or will it be their  
10 determination after the Court has ruled,  
11 assuming it rules to grant authority to  
12 reject, and they've given ten days notice of

13 intention to reject? It seems to me that goes  
14 to the heart of what it is and when it is that  
15 those parties will be able to say on that  
16 issue.

17 THE COURT: Well, I guess we ought  
18 to address this issue now. As addressed in  
19 the papers, it was addressed in the debtors'  
20 reply in which they said that to the extent I  
21 felt that their approach, although it might  
22 make sense as a business matter, is not  
23 supportable under the statute their seeking  
24 rejection. And, of course, they prefaced that  
25 all by saying they're really seeking a

88

1 consensual agreement. But barring that  
2 they're seeking rejection under 1113.

3 In my view, the statute has an  
4 either/or result. You either reject and have  
5 approval to reject or you don't. Now that  
6 being said, after the agreements are rejected,  
7 the debtors' can still, in practice, honor  
8 them for as long as they want, subject to  
9 other parties putting whatever pressure they  
10 can in the case on them to stop doing it. So,  
11 I think what they're seeking and what I  
12 believe the law is differ only as a matter of  
13 semantics. Although semantics may be

14 important with regard to press releases and  
15 internet communications and the like, I think,  
16 reading between the lines, the debtors don't  
17 want a ruling that says that the agreements  
18 are rejected because they're concerned, as any  
19 business should be, about the consequences of  
20 that, ie., the potential for a strike.  
21 However, as I said before, I think that all of  
22 Delphi's employees, and certainly their  
23 representatives, are smart enough to see that  
24 the semantic distinction is not particularly  
25 meaningful.

89

1 So, in my view, what this is about  
2 is a motion to reject. If the debtors decide  
3 after I authorize rejection, if I do authorize  
4 it, to continue on performing various aspects  
5 of those collective bargaining agreements,  
6 that's their decision. But this is a motion  
7 to reject as opposed a motion to seek  
8 authorization to reject sometime in the  
9 future.

10 MR. SIMON: With all due respect,  
11 Your Honor, and I trust that you will await  
12 our substantive remarks in that regard, I  
13 appreciate --

14 THE COURT: Well, you asked me the  
15 question. That's why I answered you.

16 MR. SIMON: I appreciate the advance  
17 view of your thinking but I think, and as we  
18 will demonstrate, it's not semantics. The  
19 debtors specifically asked not for an order of  
20 rejection.

21 THE COURT: Well, no. Their reply  
22 papers are very clear on that point.

23 MR. SIMON: No, no. Their reply  
24 papers simply said, Judge, if you disagree  
25 with them, then yourself should convert this

90

1 into a motion to reject and, with all due  
2 respect, we don't believe that's a function of  
3 this Court. But I prefer -- I don't believe  
4 it's this Court's duty --

5 THE COURT: Well, I don't view it  
6 that way.

7 MR. SIMON: -- to pull their irons  
8 out of the fire. If they made the mistake of  
9 asking for something the statute doesn't  
10 authorize them to ask for they cannot cure  
11 that problem by saying to you, Judge, if we  
12 asked for the wrong thing, help us out and  
13 convert it into our asking for something that  
14 we didn't ask for and don't have the power to



15 ask for. But, again, I'd prefer to address  
16 that substantively in the context of the  
17 balance of my argument.

18 THE COURT: All right. But --

19 MR. SIMON: The second issue --

20 THE COURT: Let me finish. Your  
21 question of me, and I don't like being turned  
22 around when someone asks me a question and  
23 then have it thrown back at me, all right?

24 You appreciate that? Your question of me --

25 MR. SIMON: Your Honor, I appreciate

91

1 the remarks --

2 THE COURT: Wait a minute. Just a  
3 minute, sir.

4 MR. SIMON: You asked me a question.  
5 I responded.

6 THE COURT: All right. And I asked  
7 you to listen to me. Your answer is, to your  
8 question, as far as testimony is concerned, I  
9 think it is my view to treat this as a motion  
10 to reject and that's how I will hear the  
11 testimony, which is the answer to your  
12 question. Now, if you want to argue  
13 notwithstanding that sometime in the future  
14 that I shouldn't have done that, that's fine.

15 But I gave you the answer as far as how I will  
16 hear the testimony.

17 MR. SIMON: I understand your answer  
18 and I will assume that I have the ability to  
19 make my opening remarks --

20 THE COURT: You do.

21 MR. SIMON: -- as I had planned to  
22 and will.

23 THE COURT: You do.

24 MR. SIMON: The second issue deals  
25 with the colloquy you had with Mr. Butler

92

1 regarding pensions. And I think there, with  
2 all due respect, it's not merely ambiguous,  
3 but if we turn to page 22 of the debtors'  
4 reply --

5 THE COURT: I have it. Footnote 15?

6 MR. SIMON: Up -- well, but -- up at  
7 the top --

8 THE COURT: All right.

9 MR. SIMON: -- the matter to which  
10 the footnote is appended. "If the unions were  
11 to agree to Delphi's proposals and Delphi  
12 subsequently determined that it could not find  
13 a way to maintain the plan, it would have to  
14 seek further judicial relief under ERISA  
15 provisions and, if necessary, Section 1113."

16 THE COURT: Right.

17 MR. SIMON: But that's all prefaced  
18 with "if the unions were to agree."

19 THE COURT: Right.

20 MR. SIMON: Footnote. "If the  
21 unions were not to agree," and that's why  
22 we're here, "then Delphi would be required to  
23 seek relief under both Section 1113 and ERISA.  
24 If, however, the Court grants the 1113 relief  
25 Delphi seeks, Delphi would only be required to

93

1 seek relief under ERISA." As I understand Mr.  
2 Butler's response to your question, that is,  
3 in effect, a waiver of any claim it might have  
4 that it would seek relief only under ERISA and  
5 that the requirement to seek it under both  
6 1113 and ERISA is no longer optimal. Which  
7 is, as I understand --

8 THE COURT: Well --

9 MR. SIMON: -- what Mr. Butler  
10 responded to -- he said that's for another  
11 day. Did he mean, and did this Court  
12 understand him to mean, and should we  
13 understand him to mean, that if this order is  
14 granted, there will still be the necessity for  
15 a further 1113 proceeding, as well as an ERISA

16 proceeding?

17 THE COURT: Well, I'll tell you what  
18 I understood him to say, and you can correct  
19 me if I misunderstood you, Mr. Butler. They  
20 are not seeking, pursuant to this motion, sort  
21 of standing authority to terminate the pension  
22 plan if it is "necessary" down the road. If  
23 they decide that they need to terminate the  
24 pension plan down the road, they'll need to  
25 get whatever authority they need to get at

94

1 that time. And if that includes Section 1113,  
2 they recognize that. They're not getting  
3 advance authority today.

4 MR. BUTLER: Your Honor, just so the  
5 record's clear because I don't want there to  
6 be any miscommunication. Your Honor's  
7 understanding is correct. If I indicated that  
8 1113 would definitely apply, I may have  
9 misspoken. The reason for that is, as Your  
10 Honor just said, this is an all or nothing, an  
11 either/or. And nothing in my comments in  
12 trying to preserve the employees' pension  
13 should be read by Mr. Simon as an effort to  
14 say that we're not seeking all the relief we  
15 are in this motion, which is a rejection of  
16 the collective bargaining agreements. But I

17 still am of the view that we have to come back  
18 to court on the pension issue. That's  
19 probably under the distress formation --

20 THE COURT: If you decide to  
21 terminate --

22 MR. BUTLER: Correct, Your Honor.  
23 Which is not our plan.

24 THE COURT: Okay.

25 MR. BUTLER: At least at present.

95

1 THE COURT: Okay.

2 MR. SIMON: Your Honor, in the early  
3 1950s, the then CEO of General Motors famously  
4 declared that what's good for General Motors  
5 is good for America. Today -- some of us in  
6 the room besides myself, I trust, are old  
7 enough to have remembered that. Today we have  
8 Delphi spawned by General Motors telling us  
9 that closing 21 plants in America, eliminating  
10 25,000 middle-class jobs in America, slashing  
11 the wages, pensions and benefits of the 5,000  
12 or so American workers that will be left in  
13 Delphi's seven remaining American plants is  
14 good for Delphi.

15 Delphi's turnaround management may  
16 think it's good for Delphi but it's not good

17 for America. It's not good for the American  
18 workers. It's not good for the Bankruptcy  
19 Court as an institution and, in fact, it's not  
20 good for Delphi as a company.

21 Delphi's plan is to substantially  
22 exit its United States operations and transfer  
23 its production to low wage foreign facilities,  
24 to convert the remaining few Delphi American  
25 workers from the middle-class to the financial

96

1 margins somewhere between just getting by and  
2 poverty level. Delphi's ingenious plan is to  
3 make everyone else pay for the mess that this  
4 so-called transformation will create. A mess  
5 not just to Delphi's workers, but for American  
6 taxpayers, General Motors, Delphi's creditors  
7 and shareholders, the communities that Delphi  
8 will abandon and the families that it will put  
9 at risk.

10 And Delphi intends to use this Court  
11 as the vehicle for this travesty because what  
12 stands in the way of its ghoulish version of a  
13 restructured Delphi are a number of annoying  
14 union agreements. And Delphi says that you  
15 have the power to free Delphi from the  
16 constraints of those agreements and that you  
17 should exercise that power. UAW is here to

18 argue that you don't have that power and, if  
19 you do, you shouldn't exercise it.

20           Whether or not this nation should  
21 have an industrial policy is not, of course,  
22 the question before the Court. The fact is we  
23 do not have an industrial policy. In Chapter  
24 11, in general, Section 1113, in particular,  
25 and this Court, as the shepherd of the Chapter

97

1 11 process, are not intended, are not designed  
2 to operate as a vehicle for the transformation  
3 of an entire American industry and adjustment  
4 to globalization.

5           Delphi has misused the processes of  
6 Chapter 11 and Sections 1113 and 1114 to get  
7 us where we are today, facing the prospect  
8 that Delphi will gut its work force and its  
9 American operations and inflict unspeakable  
10 financial pain on tens of thousands of  
11 workers, their families and communities, all  
12 based on a couple of days of court testimony,  
13 a dune of academics and investment bankers and  
14 binders and binders of exhibits, the most  
15 interesting and revealing of which the debtor  
16 wants to shield from public scrutiny and keep  
17 secret.

18                   This is wrong. And the Court should  
19 not countenance it. To be sure, the American  
20 automobile industry is undergoing a massive  
21 transformation. The impact of that  
22 transformation will be felt by millions of  
23 people in very profound in life and community  
24 changing ways. But Section 1113 is too  
25 slender a reed to bear the burden of such a

98

1 massive undertaking. And this Court should  
2 resist the effort, the transparent effort, by  
3 the debtor to use Section 1113 as the fulcrum  
4 to leverage the restructure of the industry in  
5 the manner it has chosen and to restructure  
6 the extraordinarily complex web of  
7 relationships and obligations that exist  
8 between the debtor and General Motors and not  
9 only those relating to the employees at Delphi  
10 who were formerly employees of General Motors,  
11 including, of course, the Delphi as supplier  
12 contracts. The pricing mechanism of those  
13 contracts. The guaranteed purchase provisions  
14 of those contracts. All matters that are  
15 before you in a companioned motion.

16                   That Delphi is using the leverage of  
17 this Section 1113 process to pursue its mega-  
18 strategy with regard to General Motors is



19 obvious and they've admitted it in their own  
20 filings. So, bad enough that they've misused  
21 the Court process to gain leverage in  
22 bargaining with the auto workers, what they've  
23 really done is to make the employees of Delphi  
24 mere pawns in Delphi's broader dispute with  
25 General Motors. And that Delphi

99

1 simultaneously filed motions to reject  
2 thousands of commercial contracts with General  
3 Motors renders that strategy utterly  
4 transparent.

5           Section 1113 purposefully has a  
6 narrow focus. It permits a debtor, under  
7 certain circumstances, to reject the labor  
8 contract if a labor union has refused without  
9 good cause to agree to proposed modifications  
10 to the labor contract necessary to  
11 reorganization.

12           Where the reorganization plan is  
13 clear, or at least discernible, and where the  
14 path requires union contract modifications  
15 proposed by the debtor, where the shoe fits,  
16 where the glove fits, 1113 relief may be the  
17 appropriate remedy.

18           But here, there is no discernible

19 path to reorganization. The debtor candidly  
20 admits that. Even if this motion were granted  
21 in full, this debtor has no idea what it will  
22 have in the way of a business. Will the  
23 debtor have, in effect, written off 50 percent  
24 of its current business, General Motors? Or,  
25 will its transparent strategy of using this

100

1 1113 motion to leverage its bargaining  
2 position with General Motors succeed? And  
3 succeed in whole or in part? In what part?  
4 At what price? With what impact on its  
5 financial projections? And with what impact  
6 on its rationalization for seeking the level  
7 of 1113 relief it seeks? How many plants will  
8 Delphi sell? At what price? If this Court  
9 grants the 1113 motion, what impact will the  
10 resulting low wages have on the sale price of  
11 those plants? And what will be the impact on  
12 the rationalization in this Court for the  
13 level of 1113 relief it seeks?

14           There are answers to none of those  
15 questions. The path is not only not  
16 discernible, it is not conceivable.

17           Delphi concedes that even if this  
18 Court grants the motion in full and obtains  
19 the GM relief it seeks independently from this

20 Court in full, it does not have a viable  
21 business plan. Delphi concedes that there  
22 still needs to be a solution to its  
23 underfunded pension plan. A solution not  
24 available under current law. A solution  
25 Delphi has not set forth and for very good

101

1 reason. It hasn't a clue.  
2 Delphi does have a grams to feed  
3 your vision. Let us cut wages to the bone.  
4 Let us get rid of benefits and decent working  
5 conditions. Get rid of our American plants  
6 and, one way or another, we'll figure out what  
7 to do with the rest of whatever may be left.  
8 Will we still have GM? Who knows? Will we be  
9 able to fund our pension obligations? Will a  
10 unions' strike make all of this academic? Who  
11 knows? Delphi says, trust us. Give us the  
12 leverage of having union contract rejection in  
13 our hip pocket and we'll be able to get  
14 everyone to sit down and do the right thing as  
15 we, Delphi, see fit.

16 That's what Delphi's motion is  
17 really all about but that's not what Section  
18 1113 is about. And we hope to persuade Your  
19 Honor that you should not permit yourself or

20 this Court to be Delta's enabler in this mega-  
21 strategy.

22 THE COURT: Well, let me ask you.  
23 Do you intend to show that Delphi should not  
24 make any proposal?

25 MR. SIMON: I'm sorry, Your Honor?

102

1 THE COURT: Do you intend to show  
2 that Delphi should not seek to reject the  
3 contracts at all, at this point?

4 MR. SIMON: That is correct, Your  
5 Honor. We believe, as Delphi believes from  
6 time to time over the last six months, that  
7 the only way this matter is going to be  
8 resolved, the only way that Delphi is going to  
9 be able successfully to reorganize, and  
10 they've acknowledged this, is in a tripartite,  
11 enormously complicated concentric arrangement  
12 between General Motors, its offspring Delphi  
13 and the unions. And as the complexity of the  
14 special attrition program, submitted and  
15 approved by Your Honor, indicates all one has  
16 to do it. That's not an easy process, Your  
17 Honor. That agreement was reached only after  
18 tortuous bi-part type and, ultimately,  
19 tripartite negotiations. The UAW understands  
20 perfectly well, as does each of the other

21 unions at this table, that the only way this  
22 case is going to emerge successfully is if  
23 that bargaining can take place as the nation's  
24 labor policy dictates, and as common sense  
25 dictates, in direct negotiations around the

103

1 table. Delphi has determined --

2 THE COURT: Let me interrupt you.  
3 Why aren't those happening?

4 MR. SIMON: Pardon me, Your Honor?

5 THE COURT: Why aren't those  
6 happening?

7 MR. SIMON: Ah. Excellent question.

8 They did happen. And you had, as a result of  
9 those negotiations just a couple of weeks ago,  
10 this extraordinary agreement providing for  
11 attrition. The parties agreed -- the three  
12 parties agreed, the UAW, General Motors and  
13 Delphi, that there is a framework within which  
14 these negotiations had to take place. There  
15 were basically three parts to that process.  
16 They agreed to the three parts. They agreed  
17 to the order in which they would be addressed.  
18 And they agreed to a process to address them.  
19 You'll get testimony on this.

20 The first was to determine the

21 demographics. What workers are actually going  
22 to be left at Delphi? What's going to happen  
23 to workers who are not at Delphi? What are  
24 the demographics of the Delphi work force  
25 going to be? What will be their skill level?

104

1 What will be their seniority level? Who are  
2 they going to be? Once you know what the  
3 population is, you can then turn to a  
4 determination of what the business is going to  
5 be like. They call it the footprint.

6           The parties agreed that once they  
7 resolve attrition, they would move to the  
8 footprint. The footprint was going to say,  
9 taking this group of employees, what products  
10 are we going to make with those employees? In  
11 what plants? With what level of General  
12 Motors support? And then, only after they had  
13 identified their employees and determined the  
14 footprint of what Delphi was going to consist  
15 of, they would then turn, finally, to what  
16 adjustment and terms and conditions of  
17 employment and wage levels were necessary for  
18 reorganization of that business that phases 1  
19 and 2 would have addressed.

20           And, as I indicated earlier, they  
21 had, with difficulty but with great success,

22 addressed the first problem and then days  
23 later, rather than continue the process for  
24 reasons not described anywhere in their papers  
25 or in their declarations, they abandoned the

105

1 negotiation process and moved into Court.

2           And our firm position, Your Honor,  
3 is that by so doing, they chose a litigation  
4 strategy rather than the negotiation strategy  
5 which had succeeded literally up to days  
6 before they abandoned the effort. You might  
7 want to ask Mr. Butler why or we'll go through  
8 it with witnesses on the witness stand.

9           I was saying that that's what their  
10 motion is all about, but it's not what 1113 is  
11 all about. The Bankruptcy Court for the  
12 Southern District of New York is a court of  
13 the United States. The role of a court of the  
14 United States is to hear and determine cases  
15 and controversies. In response to our  
16 objection, and here I'm going into what Your  
17 Honor has expressed his views about -- I do it  
18 understanding that, but I believe the record  
19 should reflect our strong views on the  
20 subject. We would ask Your Honor to  
21 reconsider his views. I understand you

22 haven't ruled but you've certainly given a  
23 strong indication as to where you are.

24 But in response to our objection,  
25 based on case or controversy issue, the

106

1 advisory nature of the relief requested in the  
2 1113 motion, Delphi, in its omnibus reply, at  
3 page 2, lively suggests that if the Court  
4 doubts that the Court has discretion to do a  
5 Delphi's motion very carefully, very  
6 explicitly, and incorrectly asks this Court to  
7 do, why this Court should then "simply modify  
8 the orders Delphi submitted" and do something  
9 Delphi's actual motion does not seek.

10 This is not a mere quibble. It is  
11 not mere semantics. It goes to the heart of  
12 the fundamental flaw in Delphi's 1113 motion.  
13 Because, in its essence, its 1113 motion is  
14 not an 1113 motion.

15 Delphi has not come to this Court as  
16 a last resort, as 1113 contemplates. To the  
17 contrary, this is a bald-faced effort by  
18 Delphi to ensnare this Court in a complex  
19 labor relations and business ploy to engage  
20 this Court, not as a decider of a case, but as  
21 a player whose services are invoked to set the  
22 stage for a final round of negotiations



23 between Delphi, the UAW and General Motors and  
24 that's not this Court's proper role.

25 THE COURT: Doesn't 1113 contemplate

107

1 expressly negotiations during the hearing  
2 process?

3 MR. SIMON: Yes, sir.

4 THE COURT: So, isn't it a complex  
5 forum for negotiations?

6 MR. SIMON: It is, Your Honor, and  
7 if Delphi had sought a rejection motion, or  
8 unless the Court stays with its original  
9 decision and converts its improper motion into  
10 one seeking rejection, that doubtless would  
11 have happened. But what Delphi is looking to  
12 do is use this Court and get from you hip  
13 pocket authority to use in negotiations after  
14 this Court has ruled.

15 Your Honor, you've put your finger  
16 precisely on the point. 1113 is designed, and  
17 actual experience indicates that design has  
18 been fulfilled, to force the parties before,  
19 during and right up to the moment of the  
20 Court's ruling to reach a compromise. Because  
21 each side then bears the burden of the Court's  
22 decision if it chooses not to do so.

23                   That's not what Delphi sought.  
24   Delphi was being too cute by far. They said,  
25   give us authority, Your Honor. Let us put it

108

1   in our hip pocket. We'll use it if and when  
2   we decide to use it after you've ruled to give  
3   us authority. Then we'll say, okay, General  
4   Motors, okay, Union, let's get together. Look  
5   what I have here.

6                   This is like a poker game where they  
7   have an ace in the hole given to them by the  
8   Court before the rest of the cards are dealt.  
9   That's not what 1113 is all about. You are  
10   not sitting in their corner.

11                  THE COURT: Well, I know I'm not  
12   sitting in their corner, but let me ask you a  
13   related question. Which is, assume for the  
14   moment -- this is so I can understand your  
15   argument -- that notwithstanding everyone's  
16   efforts to negotiate during the hearing  
17   process and before I ruled, that I did rule  
18   that the UAW agreement was rejected. Wouldn't  
19   the unions' position then be, so what? You  
20   still have to deal with us?

21                  MR. SIMON: No question about it.  
22   They'd still have to deal with us. But the  
23   union would also have at that point the power

24 to strike. What happens, at that point, is  
25 that both sides are empowered. The company is

109

1 empowered to impose. The union is empowered  
2 to strike. And that's what labor relations is  
3 all about.

4 THE COURT: All right. And that  
5 goes -- and that is apropos in my remark  
6 earlier as to why I think the debtors were  
7 seeking what they were seeking. And I  
8 understand your point on that point. But they  
9 appear to be prepared nevertheless to live  
10 with the consequences of a strike.

11 MR. SIMON: If they're prepared to  
12 live with the conse --

13 THE COURT: That's their gist of  
14 their reply which says if the Court thinks  
15 it's appropriate to treat solely as a motion  
16 to reject, and not something in our hip  
17 pocket, the consequences -- you know, they're  
18 taking that risk.

19 MR. SIMON: Your Honor, too little  
20 too late. They had every right -- they know  
21 how to read the statute. They know what the  
22 statute provides. They also know what  
23 strategy they want to pursue. They wanted to

24 pursue a strategy that gave them their cake  
25 and allowed them to eat it, too. And for

110

1 months now, we have been preparing and  
2 defending against that motion. They cannot,  
3 simply by invoking this Court's assistance,  
4 say, okay, try that. Didn't get away with it.  
5 Nice try, no cigar. Now, let's make believe  
6 we asked for something else. Judge, help us  
7 out.

8               With all the liberal pleadings in  
9 the world, Your Honor, when something goes to  
10 the very heart of the statute, and this goes -  
11 - that's why I say this goes to the heart of  
12 the statute. It's not a quibble and it's not  
13 semantics. They just should not be permitted  
14 to get away with that.

15               THE COURT: Well, we'll see what the  
16 evidence shows.

17               MR. SIMON: And I won't repeat,  
18 even though I think it perhaps may have been  
19 more elegantly phrased, what I had prepared  
20 for this morning. I think we have said about  
21 as much as that issue as would be productive.  
22 So let me move on.

23               Delphi's draconian proposal is based  
24 upon a business and financial projection,

25 itself long delayed. That projection

111

1 forecasted very substantial losses by the  
2 company going forward. The cuts in wages,  
3 benefits and working conditions, proposed by  
4 Delphi, are said to be necessary with those  
5 very substantial projected losses. But -- and  
6 it's a big, big but -- that business and  
7 financial projection is bogus. I realize  
8 that's easy to say. I know that such a broad-  
9 based statement can be dismissed as mere  
10 advocate zeal. But don't listen to my words.  
11 Look at the numbers. Not my numbers. Not the  
12 UAW numbers. Not Lazard's numbers, but  
13 Delphi's own numbers.

14 First, let's all acknowledge that  
15 when we deal with projections -- that's all  
16 they are -- are projections, subject to  
17 enormous contingencies and variables, they're  
18 close to chaos theory. The flapping of a  
19 butterfly's wings in China lead to an  
20 earthquake in California. And the further out  
21 the projection goes, the more unreliable it  
22 is. 2010 is tougher to predict than 2008.  
23 2008 is tougher to predict than 2007.

24 Another factor, and you'll hear a

25 good deal about this when you hear from Mr.

112

1 Millstein of Lazard. Another factor of  
2 dealing with the reliability of projections is  
3 the track record of the predictor. And, while  
4 I intended to Google it or go to the Oxford  
5 English, I didn't. I suspect a track record,  
6 one way or another, is tied into the  
7 performance of touts at the racetrack. And  
8 the better the tout's record at the track, the  
9 more reliable, the more credible the more  
10 people are going to pony up ten bucks or the  
11 tout sheet. And we know that reliability of  
12 the tout's efforts are likely to be more  
13 credible if he called yesterday's races pretty  
14 well. Better than last week's. Last week's  
15 better than last month's. The track record  
16 and the credibility it supports or erodes is a  
17 crucial factor in determining the credibility  
18 of a given projection.

19 Now, let's look at the credibility  
20 of Delphi's skills at projection. How did  
21 they do for their very first significant day  
22 at the track? The first quarter of 2006.  
23 January, February and March of this year.  
24 Actual performance during that quarter  
25 exceeded their projection for that quarter by

1 75 percent. That amounted to a huge  
2 difference, hundreds of millions of dollars.  
3 In round terms, a half a billion dollars  
4 missed in the first quarter, yesterday at the  
5 track. Even more interesting is that their  
6 projection for that quarter was given to the  
7 unions two days before the end of the quarter,  
8 March 29th. And that projection was 500  
9 million dollars wrong than what turned out to  
10 be actual, as of March 31, two days later.

11           There's more, a lot more that you'll  
12 hear from Mr. Mercile about the gap between  
13 Delphi's projections and performance and I  
14 won't detail him and Delphi, like the tout at  
15 the racetrack with the poor record, will have  
16 excuses. The rain that muddied the track  
17 wasn't predicted; the jockey had a bellyache;  
18 the actual winner had a lucky day and  
19 outperformed his last dozen outings. Maybe  
20 so. But be cautious before you fork over the  
21 ten-spot. And please be cautious before you  
22 gut a labor contract for tens of thousands of  
23 jobs and families. And trash dozens of  
24 communities relying upon a projection so  
25 grievously, outrageously, egregiously wrong as

1 to be laughable. Half a billion dollars, in  
2 this case, in the first quarter of a four or  
3 five-year projection is humongous.

4 Let me turn to the statutory  
5 requirements relatively briefly. Our case  
6 will show that Delphi's motion meets none of  
7 the statutory requirements and, in fact, so  
8 distorts the requirements of the statute as to  
9 render them almost meaningless. I've already  
10 gone on at length and, as Your Honor may  
11 believe, at excessive length about the  
12 advisory opinion aspect in this Court's role.  
13 I won't deal with that further here. But as  
14 to the necessity requirement, UAW's argument  
15 is that the entire litigation is premature.  
16 Delphi, in fact, in its declarations goes back  
17 to the summer of 2005, and even earlier, to  
18 try to construct a longer history for its pre-  
19 motion activity. Because when a proposal is  
20 served on March 24th, as this 1113 proposal  
21 was served, and a motion is filed on March 31,  
22 a debtor hasn't made a credible case for  
23 relief. By extending the story, or trying to,  
24 Delphi tries to minimize the rushed nature of  
25 recent events. We'll address the timeline



1 through our witnesses and, as I indicated, we  
2 will show that the process is far from  
3 exhausted. There's no pressing need -- in  
4 fact, there's no need at all to grant the  
5 sweeping relief sought by the motions at this  
6 time and, by so doing, undermine the  
7 fundamental workings of the statute which  
8 places, as Your Honor has indicated, a high  
9 premium on bargaining as a solution to these  
10 problems, with litigation only as a last  
11 resort and certainly not as a ploy.

12 As I indicated, the evidence will  
13 show that early this year, the parties -- and  
14 here, again, I'm talking about the three  
15 parties -- with all due respect to our brother  
16 and sister unions, they had a role or would  
17 have a role in this going forward, that the  
18 framework for addressing the issues involve  
19 three basic issues. First, demographics, we  
20 discussed it. Second, the footprint and  
21 finally, what labor modifications were  
22 necessary. They agreed to the order in which  
23 they would deal with those. They successfully  
24 addressed the special attrition program and  
25 then, with the ink barely dry, they filed an

1 1113, rather than continue with the next step  
2 in the framework process.

3           Inevitably, the parties are now  
4 consumed by litigation, so that the momentum  
5 that started with the attrition program came  
6 to a screeching halt. Your Honor indicated,  
7 and history suggests, that even during the  
8 course of litigation, bargaining is expected  
9 and normally takes place. Most of the  
10 bargaining or most of the small cases would  
11 not have Skadden and its mad-dog litigators  
12 driving everyone crazy in terms of preparing  
13 for litigation. So that, while inferior, Your  
14 Honor -- yes, there are separate teams dealing  
15 with negotiations and with litigation and yes,  
16 inferior they are to be able to proceed  
17 independently and simultaneously. But in the  
18 real world, the parties who are the decision-  
19 makers, both in litigation and in  
20 negotiations, are the same. The collegial,  
21 collaborative, cooperative effort that is at  
22 the heart of any consensual agreement. That  
23 is at the heart of negotiations. The trust  
24 that is at the heart of any negotiation is not  
25 nearly frayed by aggressive advocacy in

1 litigation, it is torn asunder. You cannot  
2 cooperatively, collegially and collaboratively  
3 deal with one another openly, honestly and  
4 with trust at the bargaining table while, at  
5 the same time, the litigators are knocking  
6 your heads off and public statements are made  
7 in the press. Yes, Your Honor, we're  
8 certainly ready to negotiate. We will. We  
9 have no choice to negotiate. But let there be  
10 no mistake, this proceeding was, is and will  
11 continue to be a very serious impediment.  
12 Impediment, not aid. Impediment, not pushing  
13 towards a negotiated solution.

14 Delphi has before us, before you,  
15 two proposals, each contingent. Neither one  
16 of which could be implemented by the company  
17 even if you gave the full relief requested on  
18 both the UAW and the other unions and the  
19 General Motor's motions. Are these  
20 contingent, alternative proposals necessary to  
21 permit reorganization as required by  
22 1113(b)(1)(a)? We'll say much about that  
23 during our testimony and we'll show the many  
24 defects in the proposal. They're not  
25 necessary because they reach too far. They

1 address unrefined generalities, like  
2 competitiveness and flexibility. They're  
3 based on projected profitability that's  
4 fraught with problems, as I've indicated  
5 earlier in my racetrack tout and as Mr.  
6 Millstein, presumably in more elegant terms,  
7 will describe as he testifies.

8           The wage proposals rely on academic  
9 compensation, comparability constructs that  
10 are deeply flawed, both in theory and  
11 methodology. You'll have expert witnesses  
12 from us that will tell you about that. Dr.  
13 Watker and I have been playing the  
14 comparability game since the 1980s in other  
15 contexts. I'm sure you'll be fascinated by  
16 it. The proposals bear little resemblance to  
17 the prototype for labor costs and the types of  
18 cases exemplified in the recent Conair  
19 decision in this Court. Not before Your  
20 Honor, but in this Court. Where there's an  
21 identifiable and fully transparent ACS, an  
22 allocation of cost savings, to particular  
23 groups and complete disclosure regarding the  
24 financial basis in the proposal, none of those  
25 are present here.

1                   On the information provision  
2   requirement you will hear, at great length,  
3   about whether the information provided meets  
4   the statutory standard. To be sure, the  
5   debtors provided a volume of material. Boxes  
6   and boxes, gigabytes and gigabytes of data,  
7   almost none of it of any use or consequence,  
8   as you will hear from Lazard. Has the union  
9   rejected a proposal without good cause?  
10   Hardly. It is Delphi that has chosen to  
11   commence this litigation at a time when the  
12   parties had made such significant progress  
13   which Delphi astoundingly diminishes in its  
14   statements to the Court now, as compared with  
15   how much it trumpeted that agreement when it  
16   was reached. It was -- it's very distressing  
17   to sit here and listen to them denigrate what  
18   they perceive of as so essential to the task,  
19   when it was underway and when it was achieved.  
20   And even now, as the options available to the  
21   employees are still open and to be selected by  
22   them -- the interorom quality of the motion  
23   and its desired impact, from Delphi's point of  
24   view, in pushing General Motors to the  
25   bargaining table. It's also designed, as I

1 said, on an interorum basis. To have people  
2 exercise options that will change their lives.  
3 It is a further abuse of the 1113 process.

4 Finally, the evidence will show that  
5 the balance of equities does not favor  
6 rejection. Here, the Court must weigh a  
7 number of factors: the potential for strike,  
8 large damage claims, the relative ability of  
9 the parties to bear the burden of the proposed  
10 modification and other factors. The effect of  
11 a strike is self-evident. As we will show  
12 through our fact witnesses, rejection of the  
13 contracts will affect Delphi's workers in  
14 profound life-changing ways.

15 This case began with very public  
16 confrontational posturing by Delphi's CEO,  
17 who, I think, had more dotted pictures under  
18 him in the Wall Street Journal in the two-  
19 month period than anyone else in recent  
20 history. In this highly-charged atmosphere,  
21 workers were told they could expect extensive  
22 job loss and deep cuts in ranges, literally,  
23 to poverty levels.

24 As our witnesses will show, the  
25 anxiety, worries and fears, real fears, about

1 the future are palpable and extensive. Single  
2 parents, workers who are the sole breadwinners  
3 for their families. Workers with  
4 responsibilities to elder parents fear about a  
5 job that may be too far away from home to keep  
6 kids in their current schools. The stories  
7 are affecting and they are real. All too  
8 often, Your Honor, the witnesses are real  
9 people in real life circumstances with  
10 personal testimony about the god-awful  
11 consequences of what they'll be faced with --  
12 are simply tolerated with benign neglect by  
13 those of us wearing suits in Manhattan. You  
14 can't make an omelet without breaking eggs.  
15 That's collateral damage. It's a terrible  
16 thing -- such a shame. Part of our reaction,  
17 I suggest, is because it's too uncomfortable  
18 for us to really acknowledge reality.  
19 Abstract, academic and investment banker,  
20 battle-of-wills are much easier to deal with.  
21 Oh, we get the ritualistic bow in the papers.  
22 Oh, we, Delphi, certainly understand and have  
23 deep concern for all of those affected.  
24 We heard Mr. Butler, this morning,  
25 telling us about his days in Michigan, his

1 passing the cemetery, his passing the plant,

2 his parents. Give me a break. Chances are,  
3 the debtor won't even cross-examine these  
4 folks, get them on and off the witness stand  
5 as soon as you can -- it's simply a  
6 distraction.

7 The union and its counsel is playing  
8 to the galleries. This is a Court of equity.  
9 Fair and equitable is the standard. Willy  
10 Loman said it, attention must be paid. Thank  
11 you.

12 THE COURT: Let me go back to  
13 something you said earlier because I didn't  
14 follow it. You acknowledged that, from the  
15 UAW's point of view, this is a three-way  
16 negotiation?

17 MR. SIMON: Yes, sir.

18 THE COURT: And yet, I thought I  
19 heard you saying that this motion was somehow  
20 improper because it was intended to put  
21 pressure on GM?

22 MR. SIMON: Yes, sir.

23 THE COURT: Could you amplify on  
24 that --

25 MR. SIMON: Surely.

1 THE COURT: -- particularly, given



2 that you view this as a three-way negotiation?

3 MR. SIMON: Surely. General Motors  
4 is both the ultimate source of business to  
5 Delphi and, as the relationship over the years  
6 has shown, SGNA is a very active participant  
7 in dealing with the consequences of the shift  
8 in the industry and the consequences for  
9 workers. And it has demonstrated its  
10 willingness to participate in the tripartite  
11 negotiations that every party to this  
12 proceeding believes is absolutely essential.  
13 Delphi, in effect, is coming to this Court and  
14 said, give me all the money in the register or  
15 I'll pull the trigger. You don't go to  
16 General Motors. That's not a party to this  
17 proceeding -- that's not a party to these  
18 collective bargaining agreements -- and get  
19 them into a consensual, collaborative,  
20 cooperative, positive set of negotiations by  
21 putting pressure on the employees of Delphi so  
22 that the union would put pressure on General  
23 Motors. Or, General Motors would perceive  
24 this Court as putting pressure on it.

25 That's not what 1113 is all about.

1 I can conceive of a statute. I can conceive  
2 of a national policy that would establish a

3 procedure and a mechanism to deal with that.  
4 Other nations have. You have industrial  
5 commissions. You have a national economic  
6 policy. You have a mechanism for dealing with  
7 industrial policy. We don't. Perhaps we  
8 should. You're not it. This Court is not  
9 this nation's substitute for industrial  
10 policy. This Court decides cases and  
11 controversies. It doesn't hang out Lucy's  
12 shingle and say, the Court is in, pay your  
13 nickel, come and get the advice of the Court  
14 as to how to deal in the real world, Charlie  
15 Brown.

16 THE COURT: I think we just shifted  
17 topics, from the pressure -- let me finish --  
18 the pressure that 1113 very clearly is  
19 designed to put on parties of the debtor and  
20 unions. And here, I also think GM, if it's a  
21 tripartite negotiation and the advisory  
22 opinion forum. Leaving that aside, why hasn't  
23 congress specifically provided, in the  
24 construct of 1113, which is not, except under  
25 1113(e), a lightning-fast determination as 365

125

1 was, to, you know, face up within the  
2 construct of 1113 and negotiate?

3 MR. SIMON: Because 1113 is, in  
4 effect, a parallel to the labor relations  
5 policy and system in this country. Again, I  
6 can conceive of a statute that would have  
7 someone like General Motors bear some  
8 collective bargaining responsibility in the  
9 relationship between UAW and Delphi. But  
10 that's not what our labor law says. Our labor  
11 law says that collective bargaining  
12 negotiations take place between the  
13 representative of the Delphi employees and  
14 Delphi.

15 THE COURT: But that's why I asked  
16 you the question in the first place. You seem  
17 to be saying it really is a tripartite  
18 negotiation.

19 MR. SIMON: In the real world it is,  
20 Your Honor, but it's not in the statutory  
21 realm. We are not here to sit in judgment and  
22 surrendering how the real world approaches  
23 this problem in a rational and sane way. My  
24 view, it doesn't. 1113 is what you are here  
25 to administer. And 1113 doesn't contemplate

126

1 this. This is an effort by this company --.

2 THE COURT: Well, it seemed to me  
3 you were asking me to put off 1113 and its

4 two-party issues, so that the three of you can  
5 go off and do what you want to do.

6 MR. SIMON: You got it.

7 THE COURT: That seems to me just  
8 the opposite of what you were telling me I  
9 can't do, which is, I can't impose a three-way  
10 negotiation under 1113, and I agree with that.  
11 I have what I'm given, which is 1113.

12 MR. SIMON: And you have to make the  
13 decision as to whether or not this company has  
14 put on the table the 1113 proposal. We  
15 suggest to you, and we believe the evidence  
16 will support that it has not, and whether,  
17 even if it has, that proposal meets the  
18 statutory tests with regard to Delphi's  
19 performance of those tests, and we believe the  
20 evidence will indicate and you will or should  
21 find that it does not. Again, in a perfect  
22 world, in an abstract world, I could devise --  
23 you could devise -- this room could devise a  
24 different system. It's not the system we  
25 have. It's not my fault, it's not the union's

127

1 fault, it's not Delphi's fault, it's not your  
2 fault. But Delphi can take the system that we  
3 have and use it for a purpose for which it was

4 not designed. And that's what they're trying  
5 to do. And this Court should not count this.

6 THE COURT: Well, I guess that's  
7 where I have a -- I understand your advisory  
8 opinion point. But other than that, I have a  
9 disconnect. But I guess we've said enough on  
10 that.

11 MR. SIMON: Okay, thank you.

12 THE CLERK: Tom? 25 --

13 MR KENNEDY: I'll spend most of it  
14 replying to Bruce?

15 THE COURT: Well, he did acknowledge  
16 your existence.

17 MR. KENNEDY: Yes he did, and I  
18 actually stand here very appreciative of  
19 Bruce's remarks and I would join in almost all  
20 of them. I think they framed these issues in  
21 a remarkably precise and compelling way.

22 But let me state, as I should, that  
23 my name is Tom Kennedy, Your Honor, and I am  
24 with the firm of Kennedy, Jennik & Murray. We  
25 will be representing and have represented the

128

1 IUE-CWA in this matter. With me is my partner  
2 Susan Jennik, who may, from time to time also  
3 be speaking on behalf of the IUE.

4 I thought it was interesting that

5 Mr. Butler began his remarks this morning by  
6 commenting that it's been seven months since  
7 the filing of this case. That's, of course,  
8 true. But we look at it in this way. It's  
9 seven months after the following of what  
10 they've repeatedly labeled as a labor  
11 transformation case. We don't know what their  
12 proposal is on wages. We have not gotten  
13 critical relevant information, or got it as  
14 late as May 2nd, as part of this case, which  
15 I'll describe later. We don't know the impact  
16 on this company of the plainly relevant and  
17 material GM repricing. We don't know the  
18 impact of the attrition programs that this  
19 Court has already approved. And we do not  
20 have a clear financial picture of the steady  
21 state that this company will be in, in the  
22 event this Court and when this Court rejects  
23 their motion to eliminate these collective  
24 bargaining agreements. The fact that seven  
25 months into this case we don't know these

129

1 answers and yet the debtors are still coming  
2 forward and saying that, notwithstanding all  
3 this uncertainty, the answer to our problems  
4 is to reject the collective bargaining

5 agreements, in our view, is simply wrong.

6 But let me describe a little bit who

7 the IUE is and who I have the honor of

8 speaking on behalf of. We have 8,500 active

9 employees and 3,000 retirees with seven active

10 facilities. Three of those facilities are in

11 the Packard division. Warren, Clinton and

12 Brookhaven. Those facilities together

13 represent 5,200 of the IUE's active members,

14 60 percent. Another two facilities, Morane

15 and Kettering, that are adjacent facilities in

16 the city of Dayton, Ohio, have another 2,700

17 members between them. Those two plants, and

18 this, becomes material in this case, are

19 almost entirely servicing General Motors'

20 contracts, that are the subject of the

21 repricing decision that your Court -- this

22 Court will make a little later. With two

23 other facilities: one in Gadsden, Alabama and

24 another in New Brunswick, New Jersey, together

25 they have about 500 employees.

130

1 The one fact that is absolutely

2 clear and undebated, in this case, is that the

3 IUE, for decades has been responsive, first to

4 General Motors and then to Delphi, in its

5 efforts to become competitive. And when they

6 say competitive, they mean to abandon  
7 traditional wage rates and benefits and accept  
8 reduced payments, if necessary, to sustain the  
9 existence of jobs that are so critical to our  
10 members and to their communities. Every  
11 single facility has a competitive agreement.  
12 Even in traditional wage plants, like the  
13 Kettering facility I mentioned a while ago,  
14 the IUE wages are well below what Delphi has  
15 indicated is their standard rate of 27 dollars  
16 an hour, because the men and women in that  
17 facility took a wage freeze for four years,  
18 from 1998 through 2002. They did that in an  
19 effort to assist Delphi in maintaining product  
20 and production at that plant. If you contrast  
21 the one-size-fits-all approach of Delphi,  
22 continually labeling if production workers is  
23 making all in all costs of 78 dollars an hour,  
24 it is simply false, as applied to the IUE  
25 rates. The Kettering wage rate -- I'm not

131

1 talking about the all-in-all rate, but the  
2 wage rate averaged among all employees at  
3 Kettering is \$18.32. At Gadsden, Alabama it's  
4 \$9.85. It's \$21.85 at New Brunswick.  
5 The fact is, neither the company's



6 approach nor their proposals are, in any  
7 material way, reflective of this extraordinary  
8 difference in the IUE circumstances. And does  
9 this mean, by the way, these prior sacrifices,  
10 that the IUE is exempt from a need to look  
11 again at whether belts have to be tightened  
12 because of international competition? No,  
13 that's not our position. But what we do say,  
14 loudly and clearly, is that those prior  
15 efforts to work with the company merit a  
16 separate, thought-through, costed-out proposal  
17 that's unique and specific to the IUE-CWA and  
18 not, generically based on their view, we think  
19 false, of competitive market economy.

20 THE COURT: And the IUE is prepared  
21 to negotiate that separately?

22 MR. KENNEDY: We are not only  
23 prepared, Your Honor, we have demanded  
24 separate negotiations. We reject the concept  
25 of pattern bargaining. Pattern bargaining is

132

1 utterly foreign to an 1113 proceeding. And  
2 that's been true with a number of cases that  
3 have discussed how important it is that each  
4 individual union be measured against the 1113  
5 requirements.

6 THE COURT: But, I guess I was going

7 a little bit further, which is, assuming you  
8 reach an agreement on the proposal. Not  
9 necessarily, if you condition it on other  
10 unions getting some other type of treatment?

11 MR. KENNEDY: Well, you know, Your  
12 Honor, were I the president of IUE I'd answer  
13 that question. I'm not. I'm their attorney.

14 THE COURT: Now there are a lot of  
15 conditions in my -- there are a lot of  
16 conditions in my question but, under the right  
17 circumstances --

18 MR. KENNEDY: Under the right  
19 circumstances, Your Honor, the IUE will sign  
20 an agreement necessary to maintain the jobs  
21 and income and lifestyle of its members which  
22 are currently under what we regard as utterly  
23 unnecessary assault. If you look at the  
24 Delphi proposal, their proposal is the same  
25 whether the plant to which they're applying it

133

1 has a positive operating income in 2005 -- is  
2 projected to have a positive operating income  
3 in 2006 or has lost hundreds of millions of  
4 dollars. They've made the same proposal. The  
5 March 24th proposal's the same for each union,  
6 despite the reality, that IUE critical items,

7 like wages, are negotiated locally and not  
8 nationally. And the March 24th proposal is  
9 the same even for plants, as I've said, where  
10 the start-rate is already below ten dollars.

11 Your Honor, I want to address five  
12 specific statutory elements that are important  
13 and critical in the Section 1113 motion.

14 First, did the IUE-CWA have good cause to not  
15 accept the March 24, 2006 proposal made by  
16 Delphi? That is the heart and soul of this  
17 case, with respect to the IUE. In the Conair  
18 opinion, Judge Hardin pointed out that the  
19 question is not whether the union made a  
20 reasonable counter-proposal or negotiated in  
21 good faith. It is solely whether it had good  
22 cause to reject the employer's offer. And we  
23 had to manifest undeniable reasons why we  
24 could not accept, let alone did not have the  
25 right to refuse, the March 24th proposal.

134

1 The statute presumes, Your Honor, at  
2 Section 1113(b)(1)(a), that the debtor-in-  
3 possession shall "make a proposal" to the  
4 unions. A proposal are words with meaning. A  
5 proposal is a set of working conditions that,  
6 if the union thought they were acceptable,  
7 could sign. We could agree to -- they could

8 be implemented, they are for real, they are  
9 specific. That's not what we got. And in  
10 fact, in every other Section 1113 proceeding,  
11 we could find the employers did exactly that.  
12 They gave the union a specific proposal. In  
13 fact, Delphi did that on two occasions. We'll  
14 talk about it in a minute, but they made a  
15 specific proposal on October 20th and then on  
16 November 15th. We didn't like it, but, at  
17 least, they were specific. Not the March 24th  
18 proposal. Their so-called GM consensual  
19 scenario is vague and indefinite as to  
20 critical terms, such as wages, pensions and  
21 other benefits since it depends on General  
22 Motors' support that has not been forthcoming.  
23 IUE could not have accepted that proposal. It  
24 did not know what the wages were. That  
25 doesn't qualify as a proposal under Section

135

1 1113 (b)(1)(a) and was, therefore, easily  
2 rejected or not accepted by the IUE. Delphi,  
3 in fact, could not reasonably have expected  
4 the union to have accepted a proposal that  
5 indefinite or its companion, a proposal that  
6 suggested a wage of \$12.50. That wage is  
7 below a majority of the comparisons, as the

8 evidence will show, Delphi has offered as an  
9 explanation for its market wage defense. The  
10 12.50 could not have been accepted, \$22 was on  
11 the table, even though conditionally.

12 And what's the explanation for that  
13 remarkable situation -- that get's back, I  
14 believe to a colloquy you had with Mr. Simon.  
15 To answer the question you posed to him, from  
16 the IUE's position, this is a two-party  
17 negotiation. We're negotiating with Delphi,  
18 we're not negotiating with General Motors.  
19 It's Delphi's obligation to make a proposal  
20 that they have either money on hand or  
21 reasonably expect to get, to fund. Until  
22 they've done that, we're not able to present a  
23 meaningful counter-offer. What they're doing  
24 instead, is attempting to leverage position,  
25 as Mr. Simon explained, and I don't think

136

1 anybody doubts, to force General Motors to put  
2 up more money. I don't know what the business  
3 strategy in that is. That's above my pay  
4 grade. I know, as a labor union lawyer that  
5 I'm negotiating with Delphi. And until Delphi  
6 is very clear about what it is they want from  
7 the IUE, there's no possibility of an  
8 agreement being made.

9 THE COURT: But they say that the  
10 November proposal is the proposal, unless GM  
11 signs on.

12 MR. KENNEDY: That's correct, they  
13 say that. Which leaves us in the position of,  
14 well, it could be the November proposal, it  
15 could be the March 24th proposal, it could be  
16 somewhere in between. That's a problem for  
17 Delphi, I know that. But it's also a problem  
18 for them in this 1113 proceeding because that  
19 is not a basis for reaching an agreement with  
20 the union. Every business, in entering labor  
21 negotiations, has to make a judgment on what  
22 they're going to get in over the next three  
23 years -- that the typical length of a contract  
24 -- and what they can afford to give the union  
25 during that agreement. Sometimes it's harder

137

1 to make that estimation; sometimes it's easier  
2 that's a business' job. They're trying, and I  
3 understand why they're doing it, but they're  
4 trying to have the best of both worlds in that  
5 circumstance. They're saying: we're not going  
6 to make a commitment to pay you into the over  
7 \$20 an hour level we know we need to get to  
8 make an agreement. We're not going to make

9 that offer to you. We're going to let you  
10 take, with the threat of a strike, the wood to  
11 General Motors and get them to give us enough  
12 money to do that.

13 In our view, under 1113, which is a  
14 very particular and pointed and specific  
15 statute, Delphi has to exhaust its  
16 opportunities to generate revenue from General  
17 Motors before coming to the unions and saying,  
18 okay, this is the best we can do, here's our  
19 offer and then bargaining would proceed at  
20 that point. Recognizing, they don't have to -  
21 - sorry. Recognizing, they don't have to put  
22 their best offer on the table. I'm not saying  
23 that. They have to put an offer on the table  
24 that permits negotiation. This vague,  
25 indefinite, could be 12.50 could be 22 doesn't

138

1 do that. That is not a formula for  
2 negotiations in a labor context because we are  
3 not in a three-party negotiation with General  
4 Motors. We are in a negotiation with Delphi.  
5 And they have obligations under 1113 that they  
6 haven't met.

7 THE COURT: Then why should I assume  
8 that they need to exhaust their leverage with  
9 GM first?

10 MR. KENNEDY: Because of the way  
11 that -- because of the --

12 THE COURT: Is it -- what you're  
13 saying they're doing here is exerting leverage  
14 on GM?

15 MR. KENNEDY: Yes. And to follow  
16 that up, Your Honor.

17 THE COURT: And you say they can't  
18 do that, they have to exhaust it some other  
19 way?

20 MR. KENNEDY: They can exhaust it  
21 any way they want. But they have to come to  
22 the union and make a proposal which we  
23 believe, under the statute, is defined as a  
24 set of terms and conditions that the union  
25 could accept and could be implemented. In

139

1 other words, specific terms. A range, a wage  
2 range proposal from 12.50 to 22 doesn't  
3 satisfy 1113. That's our position in a  
4 nutshell.

5 THE COURT: Okay, all right.

6 MR. KENNEDY: Now, the second  
7 problem that the union wants to identify here  
8 is that Delphi has refused to identify, for  
9 months, the savings that it was attempting to



10 generate from the IUE. That request was first  
11 made in the beginning of October of 2005. It  
12 was repeated in November, it was repeated in  
13 January it was repeated again in March. The  
14 IUE position was: tell us what you're looking  
15 to achieve at our facilities. They're  
16 different in economics than other facilities.  
17 Don't give us one-size-fits-all. Tell us what  
18 you need. And we got what we regard as labor  
19 relations nonsense back. On March 16th, in  
20 which the company says, we don't know how much  
21 we want in each facility. We don't know what  
22 we're looking for from each union. In fact,  
23 we just want a market-competitive wage. And  
24 you can figure out yourself what that would  
25 mean at your facility.

140

1 Now there are several references,  
2 Royal Composing is one, in which the Court  
3 refers to " as long as the total quantum of  
4 savings is necessary under Kerry, the union  
5 may not prevent rejection." And they go on.  
6 There's a second reference to the need to  
7 achieve comparable savings in the Royal  
8 opinion.

9 In Horsehead Industries, the Court  
10 refers to "if the union makes counter-

11 proposals that meets its needs while  
12 preserving the savings required by the  
13 debtor." It's impossible to read 1113  
14 literature and not understand the significance  
15 from an in -- a debtor of identifying what it  
16 is attempting to achieve for each particular  
17 union that is the subject of the 1113  
18 proceeding.

19           Now, in fact, the story has a new  
20 development. On May 2nd, just the other day,  
21 in response to interrogatories that I served  
22 on the debtor as part of the 1113 motion, they  
23 finally provided us with information on  
24 anticipated savings at IUE facilities. I  
25 couldn't agree more with Mr. Simon, that,

141

1 approaching these labor relations problems as  
2 something to be solved in litigation, is  
3 ultimately defeating and not within the  
4 context of 1113. To be replying months-sought  
5 information in the form of answers to  
6 interrogatories demonstrates that this  
7 proceeding is premature. It's unnecessary.  
8 We are well short of achieving a level of  
9 appropriate bargaining in which they could  
10 honestly say the union has not had good cause

11 to accept their proposal.

12 Now, Your Honor, obviously, one of  
13 the issues you're going to review is whether  
14 the March 24th proposal is clearly fair and  
15 equitable. We have a number of concerns about  
16 that. First, there's a disproportionate  
17 treatment of the managerial and salaried  
18 workforce. Now, you'll recall the KECP  
19 hearing on February 10th. I was asked, in  
20 oral argument, if the financial goals that  
21 were set were a lay-up or a reach. And I  
22 responded that I did not know, I could not  
23 make that judgment, but it looked like the  
24 company was going to make those proposals, or  
25 rather, those earning targets pretty easily.

142

1 Not too long after the hearing, I relearned,  
2 in fact, that Delphi is 500 million dollars  
3 ahead of its projections for the first quarter  
4 of 2006. It's now clear -- they will meet  
5 those projections, although we don't know how  
6 much money above the 38 million dollars that  
7 was set aside for this purpose or proved is  
8 going to be paid.

9 Here's our complaint. That's water  
10 under the bridge, we understand that. After  
11 the KECP determination, Delphi extended,

12 essentially, the same program of managerial  
13 bonuses to all 14,000 salaried employees in  
14 the United States, including all of the  
15 salaried employees that worked at each of the  
16 IUE facilities. Those people will be  
17 receiving a bonus as well. That bonus will be  
18 paid in July of 2006, exactly, potentially at  
19 the same paycheck as the company is requesting  
20 a reduction in IUE wages. It would be  
21 difficult to frame a more inequitable and  
22 inappropriate demonstration of a failure to  
23 share the pain of this reorganization than to  
24 so closely time these utterly opposite  
25 results. Why the debtor chose to do that, I

143

1 don't know, but it would be difficult to  
2 convince me -- and you could spend ten minutes  
3 or 20 minutes or half an hour talking to any  
4 individual IUE member and you would never  
5 convince them that there was anything fair or  
6 equitable in that procedure.

7 Now the second point. This proposal  
8 -- and there's nothing wrong with this by the  
9 way. We applaud this. From the company's  
10 perspective, it's based on the concept of soft  
11 landings. And we are delighted that our

12 brothers and sisters in the UAW have the  
13 options of flowbacks to General Motors, with  
14 \$25,000 relocation bonuses, which I'm not  
15 suggesting suffers or softens the blow of this  
16 proceeding in the slightest. But it's a  
17 factor. And there's 60 percent of them can  
18 retire on the attrition program. That's not  
19 true for IUE members. We don't have  
20 flowbacks. And only 39 percent of our  
21 workforce could be eligible for an early  
22 retirement. What's odd about this is that the  
23 three Packard plants I identified earlier are  
24 going to be kept open via Delphi. That's  
25 great. We're thrilled that they're keeping

144

1 the plants open. But what it means is that if  
2 they not only keep the plants open but reject  
3 our collective bargaining agreements, we have  
4 thousands of people who will suffer wage  
5 reductions without any of the soft landings  
6 that are contemplated under the proposal,  
7 other than one, which is the buy-down, that  
8 would be -- I'm assuming, would be applicable  
9 to them.

10 But the major steps that the company  
11 has pointed to as creating an equitable  
12 arrangement are not applicable to the IUE.

13 Now, we understand that's a problem. We went  
14 to the company and we said, okay, we'll talk  
15 about an attrition program, but you have to  
16 give us an attrition program that includes a  
17 value for not having the flow-backs and a  
18 value for having so many more members that are  
19 unable to retire. Delphi refused to offer one  
20 dollar more than the package they had already  
21 negotiated with the UAW. They will rearrange  
22 the deck chairs, but no money above the 140  
23 and 70 programs they had already proposed.  
24 And, as many Courts have pointed out, most  
25 recently in Conair, it does not comply with

145

1 1113, to steadfastly maintain that an initial  
2 proposal under section (b)(1)(a) is non-  
3 negotiable, which is essentially what they've  
4 done. We have no soft landings.

5 Third point under this particular  
6 element, Your Honor, of the statutory scheme  
7 is that this proposal is not reflective. When  
8 I say this proposal, I'm referring to the  
9 March 24th proposal of past IUE efforts to  
10 make this company competitive. For example,  
11 the March 24th proposal says: retiree health  
12 costs under a reduced plan will now be as a

13 premium paid by the member, \$180 per month for  
14 family coverage. They're applying that  
15 proposal to Gadsden, Alabama where people hire  
16 in at \$7.77. Thirteen percent of their wages  
17 would go toward maintaining their family  
18 coverage. That's unfair, it's inequitable.  
19 It's a product of a one-size-fits-all  
20 philosophy that does not respect the prior  
21 steps taken at some of these plants. And as  
22 the Court said in Conair, the union was bound  
23 to consider, in figuring out what to do in  
24 reaction to a proposal, in that case to the  
25 flight attendants, are at or near the bottom

146

1 level of compensation among Conair employees.  
2 That's a factor that legitimizes the IUE  
3 saying no, we're not going to accept that  
4 proposal, and that demonstrates that it's  
5 fundamentally unfair. A third -- in our view,  
6 Delphi has not discharged its obligation to  
7 provide the IUE with sufficient information to  
8 allow it to engage in bargaining over this  
9 proposal. As I've said, they've confused  
10 discovery in the legal proceeding with  
11 bargaining, and released to us critical  
12 information in the form of answers to  
13 interrogatories. And I remind you of the

14 comment in Maxwell Newspapers that the entire  
15 thrust of 1113 is to ensure that well-informed  
16 and good-faith negotiations occur in the  
17 marketplace, not as part of the judicial  
18 process. That hasn't been true here. This  
19 1113 proceeding has truncated any  
20 negotiations. It's been used to exchange  
21 information which is critically important to  
22 the negotiations. We're confusing the lawyers  
23 for the union leaders and the Delphi labor  
24 relations people. There has not been, as our  
25 experts will testify and as our fact witnesses

147

1 will testify, sufficient information exchanged  
2 to allow the IUE to engage in bargaining.

3 We also believe that Delphi has not  
4 met its obligation to bargain in good faith.  
5 As we indicated, this proposal is contingent.  
6 And a contingent proposal doesn't meet its  
7 requirements. Judge Hardin, a few weeks ago,  
8 pointed out that the structure of 1113 --

9 THE COURT: Well, again, you're  
10 focusing on the GM -- the one that requires  
11 GM's acceptance, right?

12 MR. KENNEDY: That is the proposal,  
13 Your Honor.



14 THE COURT: Well, --

15 MR. KENNEDY: It's called the GM  
16 consensual proposal.

17 THE COURT: They say that, to the  
18 extent GM hasn't agreed, it's the other  
19 proposal.

20 MR. KENNEDY: That's what makes it  
21 contingent.

22 THE COURT: Well, the other proposal  
23 isn't contingent, though.

24 MR. KENNEDY: Well, Your Honor,  
25 since there are two proposals simultaneously

148

1 being made, whether one is contingent or not,  
2 the fact is they're offering two different  
3 visions of whether people are going to be able  
4 to continue to meet their credit card bills,  
5 pay their mortgages. And one of them, they  
6 certainly can't; the other one, it's the  
7 beginning of a discussion where maybe they  
8 might -- that is not a definite proposal under  
9 any circumstance.

10 I don't think, whatever you may be  
11 able to do in connection with the relief  
12 they've requested over the -- in their motion,  
13 it would be, I believe, beyond the Court's  
14 power in 1113, to direct -- well, they really

15 meant this one of the proposals and not the  
16 other. They are stuck, and there's reasons  
17 for it, but they are stuck as they stand here  
18 today, with having attempted to go down two  
19 tracks at the same time.

20 THE COURT: Well, let's explore  
21 that. They could have made a proposal that  
22 said that if our EBIT/DA increases by 500  
23 million or a billion, then the following wages  
24 snap back.

25 MR. KENNEDY: Yes.

149

1 THE COURT: But until that happens  
2 they will be X. What is the difference  
3 between that and the GM proposal where you  
4 just substitute GM's agreement for improvement  
5 in the business?

6 MR. KENNEDY: Well, I think, Your  
7 Honor, there's an enormous night and day  
8 difference. In the first, the union's  
9 interest is finding out what are the wages  
10 going to be on day one of the new contract.  
11 If they had said to us they are going to be  
12 \$12.50, but if we do better in the future we  
13 will meet with you and consider that, even  
14 retroactively, let's give them the maximum

15 benefit of the hypothetical. The membership  
16 is still voting on \$12.50. There's not a  
17 union member in the world that you're going to  
18 sit down there and explain, don't worry men,  
19 it's \$12.50, but there's a good chance it'll  
20 double some months later when the company  
21 finally finishes its struggle with General  
22 Motors. That is not a conversation that is  
23 capable of being had in labor relations. If  
24 they'd wanted to do that, in other words,  
25 stand or die on their \$12.50 proposal, then

150

1 that's what they should have done. And they  
2 didn't for a reason they know it's south of a  
3 strike line, they know what the consequences  
4 of that proposal are. I don't think that's  
5 for real, even from them and they're simply  
6 trying to have, as they have in other areas of  
7 this proceeding, two simultaneous efforts.  
8 One to an interorum 12.50 to get everybody to  
9 leave and then somewhat higher number they  
10 haven't revealed to us yet that will be  
11 available when they finish their dance with  
12 General Motors. Again, all that may make  
13 sense to them on a business perspective. And  
14 in an 1113 perspective, they haven't met their  
15 obligation to provide a proposal, which is the

16 critical beginning of the entire 1113 process.

17 Now, what we heard from Delphi is  
18 that they're engaging in pattern bargaining.  
19 You will find that they have met with other  
20 unions dozens of times more frequently than  
21 with the IUE and that the IUE has been given  
22 some meetings but brief, preemptory, surface  
23 -- there's really been nothing significant  
24 going on between Delphi and the IUE-CWA,  
25 unfortunately. And they -- it's obvious from

151

1 their comments that they feel they can do that  
2 because of pattern bargaining.

3 Now, we reject the notion that  
4 though there has been, as a factual matter,  
5 outside the 1113 context, a history that the  
6 UAW settles first among the several unions,  
7 that's true. But that doesn't replicate  
8 itself in an 1113. In an 1113, each and every  
9 union has to separately meet the 1113  
10 criteria. And they cannot do that, with  
11 respect to us. And this is not something  
12 we've suddenly told them about. On March  
13 31st, right after the March 24th proposal,  
14 Henry Reichert, the head of our automotive  
15 conference board, wrote Delphi and pointed out

16 to them that Delphi has chosen to limit its  
17 negotiations for months to the UAW. Our  
18 members have their own contracts and their own  
19 priorities with Delphi. Your need to  
20 negotiate with IUE-CWA is not met by meeting  
21 with any other person. The fundamental  
22 reality is that Delphi did not engage in any  
23 meaningful negotiations with the IUE-CWA  
24 before filing your Section 1113 motions today  
25 in bankruptcy Court. Whether or not that

152

1 meets your legal obligations remains to be  
2 seen. It certainly is no way to reach  
3 consensual agreement as you purport to one.

4 We've been on record early and often  
5 that we are not prepared to accept pattern  
6 negotiations in this 1113 process or this  
7 Delphi bankruptcy and yet, that is the  
8 approach they've been taking. It's not  
9 permissible under Section 1113.

10 I want to address an issue, as it's  
11 obviously important in the Second Circuit, of  
12 whether the IUE-CWA has made a counter-offer  
13 and second, whether it had an obligation to  
14 make more of a counter-offer. Now, our  
15 position and I don't want to repeat this, but  
16 again, as a contingent offer that didn't meet

17 the requirements of 1113(b)(1)(a), we did not  
18 have an obligation to make a counter-offer.  
19 That we did not have sufficient information to  
20 even fashion a counter-offer. And that their  
21 practice of pattern bargaining frees us from  
22 any obligation to make a counter-offer. But  
23 not responding, rather, notwithstanding that,  
24 with respect to the one piece of the puzzle  
25 which was definite, which was the attrition

153

1 plan, the IUE did make a counter-offer. In  
2 fact, back in November, after that November  
3 15th proposal, which is a terrible proposal --  
4 but we wrote them a letter dutifully saying,  
5 we'll try to make a counter-proposal. Give us  
6 the information we need. We'll try. Before  
7 we could make a counter-proposal, they  
8 withdrew it, not in speaking to us, I might  
9 add. We found out in a press release.  
10 Essentially, there was a brief phone call a  
11 few minutes before but, essentially, we get a  
12 press release saying they've withdrawn it.  
13 Okay. We're not going make a counter-offer to  
14 a withdrawn proposal.

15 The next proposal we get is in  
16 March, March 24. As I've said, we could not

17 counter that and we haven't. This litigation  
18 and this motion and this effort by the company  
19 to roll back wages for so many people will  
20 have an enormous impact on our communities and  
21 our membership. I'm confident the Court will  
22 listen carefully to the IUE witnesses who will  
23 be called to testify, both on that topic and  
24 on the question of what they have done as  
25 locals to try to make Delphi and GM

154

1 competitive in the past.  
2 In our view, this motion is  
3 premature for the reasons I've identified:  
4 lack of critical information, uncertain GM  
5 support, there's the repricing motion that is  
6 before this Court and the substantial changes  
7 to the steady state scenario, which you are  
8 going to hear alot about and heard some  
9 already. And the unknown impact of the  
10 attrition programs. What Delphi is really  
11 saying is that, while we've looked at all four  
12 of those points, and let's assume we get as  
13 much as we could in each one, we're still  
14 going to need labor transformation. That's  
15 their position. And that may be true, I don't  
16 know. And no one knows because we don't know  
17 the answers to those four questions.

18                   But this much I'll tell you. If, as  
19 we believe any fair person would judge,  
20 Delphi's financial state is improved by  
21 billions of dollars as a consequence of these  
22 four items, the extent of labor  
23 transformation, the amount of labor  
24 transformation that they would need is clearly  
25 going to be less. And it's unfair and

155

1 unreasonable when we can't even get our arms  
2 around what this company is going to look like  
3 in six months to ask the unions, on the basis  
4 of a gloomy-as-possible steady state scenario,  
5 to make the enormous changes they're looking  
6 for in wages and benefits. This is just  
7 premature. An action by this Court denying  
8 this motion, as you should, both for the IUE  
9 and for the other unions, doesn't give the  
10 unions a get-out-of-jail-free card and we know  
11 that. But it will say to the company: get  
12 your financial house in order. Figure out  
13 with all of these changes what it is you're  
14 going to need. Make a proposal that's  
15 specific to each union on what it is you need.  
16 Give them an opportunity to accept it or  
17 reject it. If we don't fairly accept it, then



18 they're back in this Court. If we do, we've  
19 avoided the enormous judicial and lawyerly  
20 expense that we're all engaged in. For that  
21 reason, Your Honor, and we will say more about  
22 this at the end of the evidence, we ask you to  
23 reject this 1113-1114 motion.

24 THE COURT: Okay.

25 MR. PETERSON: Good afternoon, Your

156

1 Honor, Lowell Peterson, Meyer, Suozzi, English  
2 and Klein for the steelworkers union. The  
3 debtors have presented this case as a labor  
4 transformation case and it is certainly a very  
5 interesting discussion whether the post World  
6 War II social contract should be discarded or  
7 modified, whether North American manufacturing  
8 can or cannot survive at union wage rates.

9 But the issue before the Court, of course, is  
10 whether, in this particular set of  
11 circumstances, the debtors have complied with  
12 the requirements of the statute. And  
13 certainly in connection with the steelworkers,  
14 the debtors have not done so and they have not  
15 even come close to doing so. And frankly, we  
16 sort of wonder what we are doing here.

17 Let's talk about the first and most  
18 obvious obligation under the statute and case

19 law, which is the requirement that the debtors  
20 engage in good-faith negotiations with the  
21 union, whose contracts they seem to reject.  
22 It hasn't happened with respect to the  
23 steelworkers. There have not been good-faith  
24 negotiations. You'll hear some evidence about  
25 that but let me give you an overview. There

157

1 certainly have been presentations made by the  
2 debtors about the debtors' financial  
3 condition. Maybe this can be thought of as  
4 sort of aerial bombardment to soften us up.  
5 Bu, in any event, they've been talking about  
6 how they're losing money and we have to help.  
7 We understand. They've been saying that to us  
8 for a long time, they've said it to us a  
9 number of times both in the summer of 2005 and  
10 also after the petition was filed in this  
11 case. The debtors did send two separate term  
12 sheets to the United Steelworkers: one in  
13 October and one in November. We got,  
14 apparently, similar term sheets to those that  
15 were sent to the other unions. Those were  
16 withdrawn in December. Shortly before filing  
17 the motion, as with the other unions, we got  
18 another term sheet, and I'll address some of

19 the contents of that term sheet in a moment.  
20 And in the wake of getting that last set of  
21 proposals, finally, there were actually a  
22 couple of meetings between the steelworkers  
23 and Delphi. Those meetings, as I'll mention a  
24 little bit further on, basically, were  
25 information gathering and information sharing

158

1 meetings. There were no negotiations. It has  
2 been suggested that unions know the score;  
3 they know they have to give concessions and,  
4 therefore, this motion should be granted.  
5 That's an enormous logical leap between that  
6 proposition. I don't think any of the unions  
7 have stood before Your Honor, and we certainly  
8 don't stand before Your Honor and suggest that  
9 nothing at all has to be done, everything is  
10 hunky-dory, give us status quo for all of  
11 eternity. But in the real world, what is  
12 important is the actual proposals made by the  
13 debtors to make actual, specific changes to  
14 collect the bargaining agreements and to go  
15 through sets of proposals, concrete proposals,  
16 talk about how each one of them would work and  
17 see if there's a way to reach agreement,  
18 either on the proposals as initially written  
19 or as modified in the process of discussion.

20                   As I mentioned, we had a couple of  
21   abbreviated information sessions on the  
22   debtors' latest proposals in which that  
23   process was begun, barely begun. Now, the  
24   debtors assert, as most debtors do, that  
25   really the reason to file an 1113, 1114 motion

159

1   is to motivate the unions to take the  
2   bargaining process seriously. But that really  
3   stands the statute on its head. The whole  
4   concept of 1113 is that the negotiations  
5   should supersede the litigation and not the  
6   other way around. And the opposite is  
7   certainly true here. From what I understand,  
8   it's certainly true with the autoworkers and  
9   the IUE-CWA. I can represent to Your Honor  
10   that it's definitely true of the steelworkers.  
11   We have been left by the wayside as this  
12   litigation has simply resulted in legions of  
13   lawyers descending upon Troy, Michigan and  
14   Milwaukee, Wisconsin and all over the place in  
15   New York and Texas, there just hasn't been any  
16   negotiation there hasn't been any time for it  
17   and regardless of whether there has been, it  
18   hasn't taken place.  
19                   We do understand in the real world

20 that the focus of Delphi is on General Motors  
21 and our brothers and sisters in the UAW. And  
22 we understand that, as a practical matter,  
23 those negotiations will, in some important  
24 way, set the stage for our own negotiations.  
25 Bernie Quick said in his declaration, and Mr.

160

1 Butler has said it here today, that there is a  
2 practice of pattern bargaining. Well, I think  
3 that's an overstatement. I don't think that's  
4 exactly what's happened. Certainly, if you  
5 look at the differences between the contracts  
6 negotiated by the unions, it's not borne out.  
7 But, in any event, it's clear that the core  
8 group of workers is the largest group of  
9 workers. And those negotiations clearly have  
10 not progressed much at all. We're not  
11 proposing that the debtors engage in a sort of  
12 fruitless exercise of the steelworkers -- to  
13 pretend to negotiate with us while the real  
14 action is someplace else. We're not asking  
15 for that, we're not asking for a litigation  
16 exercise. We're not asking for nice drawings  
17 to be put on the wall about a process that's  
18 really not inclined to lead to anything. We  
19 understand that the focus has to be where the  
20 focus has been, or should be, which is

21 negotiations involving General Motors and  
22 largely the autoworkers. But in the meantime,  
23 that can't serve as an excuse to reject the  
24 steelworkers' collective bargaining  
25 agreements.

161

1 And yet, that is precisely what the  
2 debtors seek. In other words, it might make  
3 sense for the negotiations to take place in  
4 the order that is actually taking place, but  
5 that doesn't mean that our contracts can be  
6 thrown out in the meantime. We still don't  
7 even have an attrition proposal. Now this has  
8 been promised to the steelworkers for months.  
9 It was represented by the debtors in Court  
10 that an attrition proposal would be made and,  
11 in fact an attrition program very similar to  
12 the UAW attrition program would be offered and  
13 negotiated with the other unions, specifically  
14 including the steelworkers. The steelworkers  
15 have requested this, repeatedly from the  
16 company. We've requested it from General  
17 Motors. It's been promised by the company and  
18 by General Motors, it hasn't happened yet.  
19 How can we negotiate a labor transformation  
20 package, a key element of which has not even

21 been put on the table?

22 As argued by my colleagues and more  
23 extensively, in our objections, there's also a  
24 problem with the two sets of proposals that  
25 the steelworkers received. One, assuming

162

1 General Motors' participation to some degree;  
2 the other assuming no General Motors  
3 participation. We don't even know the degree  
4 of General Motors participation that's been  
5 requested, that's been bargained or what those  
6 discussions have entailed. Obviously, that's  
7 a variable number, it's not as if there's --  
8 if General Motors contributes one dollar extra  
9 to this process suddenly our wages jump up to  
10 the GM consensual proposal from the bare bones  
11 proposal. This is an unknown variable when  
12 the job's out of our control and we simply  
13 can't negotiate under those circumstances.  
14 This is something that involves the extent of  
15 a contribution and it has a direct impact on  
16 our wages and our benefits. And also, unless  
17 the debtors are just making up stories,  
18 clearly there is some anticipation that  
19 General Motors is inclined, at least, to  
20 discuss significant participation.  
21 Steelworkers know how to negotiate. We know

22 how to negotiate agreements that address the  
23 competitive pressures faced by many  
24 manufacturers in general and also Delphi in  
25 particular. The local union has a structure

163

1 for negotiating; it involves a negotiating  
2 committee, an executive board, membership  
3 ratification. We've used that with Delphi in  
4 the past and, in fact, have made major  
5 adjustments to the collective bargaining  
6 agreements at both of the steelworkers' plants  
7 which I'll describe in a moment.

8 In their response to our objections,  
9 the debtors suggest that the steelworkers  
10 didn't even bother to address the necessity  
11 poll of the 1113 analysis. We respectfully  
12 request that perhaps that they could have read  
13 a little bit more than the first three pages  
14 of our objections, they would have noted that,  
15 in fact, we devoted a lot of attention to  
16 necessity.

17 THE REPORTER: Sorry, could you slow  
18 down?

19 MR. PETERSON: I'll try. I'm just  
20 trying to make my 15 minutes.

21 THE REPORTER: I know.



22 MR. PETERSON: Now, as we've  
23 mentioned, the draconian changes that have  
24 been proposed by the debtors and the  
25 competitive benchmark proposals are certainly

164

1 not necessary if General Motors contributes.  
2 And that remains a live possibility. We have  
3 to recognize that in the real world that is a  
4 live possibility.

5 Similarly, the changes are not  
6 necessary with respect to the steelworkers.  
7 Because let me tell you a little bit about our  
8 actual wages. We have two plants. One is in  
9 Home Avenue in Dayton, Ohio the other one is  
10 Vandalia. The Home Avenue plant is on the  
11 hit-list. It is one of the plants that Delphi  
12 has all but announced will be closed or  
13 auctioned off. It is part of the AHG  
14 division, it's a money loser, it's gone.  
15 That's where most of our members work. Even  
16 at Home Avenue there are competitive wage  
17 agreements in place. And here's the breakdown  
18 according to the local union's numbers. There  
19 are 348 core employees at Home Avenue, that's  
20 the \$27 an hour variety. There are 280  
21 competitive workers at Home Avenue, who  
22 average \$12.59 an hour. I don't know who

23 makes \$73 an hour but it ain't us. At  
24 Vandalia the numbers are even more dramatic.  
25 There are seven core employees at Vandalia

165

1 making \$27 an hour, 159 employees who average  
2 \$16 an hour, 53 who make \$10 an hour and 52  
3 who make eight dollars an hour.

4 THE COURT: When you giving us  
5 figures, are you including all of the other  
6 non-hourly costs attributable to those  
7 workers?

8 MR. PETERSON: These are the wage  
9 figures, Your Honor.

10 THE COURT: This is just the wage  
11 amount?

12 MR. PETERSON: Yeah.

13 THE COURT: Okay.

14 MR. PETERSON: Now, I will point out  
15 that, with respect to over a hundred of the  
16 people at Vandalia, the OPED number is  
17 illusory because, in fact, we already have  
18 medical retirement accounts at which the  
19 company's obligations in connection with their  
20 retiree medical benefits is defined as 50  
21 cents an hour paid into an account. There is  
22 no OPED number there. And if we were to get

23 an attrition program, of course, it is the  
24 higher paid people who would be eligible to  
25 take those buyouts so that, in fact, both the

166

1 average hourly wage rate and the OPED and  
2 other benefit rates would substantially  
3 shrink. This is something that we pointed out  
4 repeatedly to management. I think they agree.  
5 It's just a question of people not having  
6 focused sufficiently to have engaged in a  
7 conversation with us about an attrition  
8 program. In fact, it's entirely possible that  
9 if you combine the closure of the Home Avenue  
10 plant and attrition program and so forth, that  
11 the wage rate at Vandalia will be  
12 significantly below the market rate that's  
13 been identified by Delphi and its experts. We  
14 certainly don't have to accept a proposal to  
15 cut those wage rates further.

16 THE COURT: Has there been such a  
17 reply? Is this the first time they're hearing  
18 this or has there been a reply like this by  
19 the steelworkers to the union?

20 MR. PETERSON: To the steelworkers  
21 to the company, absolutely --

22 THE COURT: I'm sorry --  
23 steelworkers to the company -- excuse me?

24 MR. PETERSON: Yes, repeatedly. To  
25 the extent there have been meetings, this

167

1 argument, these facts, have been presented to  
2 the company repeatedly. And, of course, the  
3 Vandalia agreement, I should mention, was  
4 negotiated at the end of 2004. It's still  
5 fresh in the minds of the negotiators of the  
6 company. So the employers' negotiators both  
7 know what these facts are, and they know that  
8 the steelworkers are capable of negotiating in  
9 this manner and have done so very recently.

10 Now, as for the good cause component  
11 of 1113, I think the arguments I just made go  
12 to the good cause poll. But I want to amplify  
13 a little bit and talk about whether there's  
14 been a rejection of proposals. I think that  
15 it's correct to say that it's very difficult  
16 to accept or reject these contingent proposals  
17 that are on the table. Let me parenthetically  
18 footnote that the GM consensual proposals, as  
19 we understand them, are contingent not only on  
20 some money flowing from GM but also solutions  
21 to the company's pension programs which is a  
22 much bigger bear to attack. In any event, in  
23 the real world of bargaining it's not just a

24 question of here, here's our proposal take it  
25 or leave it. At least we don't understand

168

1 that the statute permits that and we certainly  
2 hope that the debtors are not making that  
3 proposal. Instead, what has to happen is some  
4 sort of give and take and some sort of  
5 discussion. So the question of whether time  
6 for a union to actually, "reject a proposal  
7 within the meaning of 1113" is not at the  
8 beginning. It's not at the initial phase, but  
9 it's after these negotiations have had a  
10 chance to play out. That simply hasn't  
11 happened in connection with the steelworkers.  
12 Sounds like it hasn't happened with respect to  
13 the other unions either. So, I don't know if  
14 we can even answer the question of whether the  
15 steelworkers have, I'm sorry, have rejected  
16 the debtors' proposals because we're not at  
17 that phase in the negotiations. It's far too  
18 soon for that kind of analysis to kick in.  
19 And in any event, I think it's important to  
20 make two other points about these  
21 negotiations. One is it would be absurd to --  
22 for any of the unions -- to agree to the  
23 proposals that do not include General Motors'  
24 contributions while there is still some

25 possibility of General Motors contributing.

169

1 Let's just be practical, let's just be  
2 pragmatic. Leaving aside the interesting, I  
3 think very interesting, theoretical issues,  
4 the reality is, if, in fact, these unions  
5 signed off on proposals that did not involve  
6 General Motors' contributions General Motors  
7 wouldn't contribute. So, as a matter of  
8 bargaining strategy, it's a very simple thing  
9 to address. It doesn't make sense to pretend  
10 that the non-GM proposals are serious or that  
11 any union would have any realistic real-world  
12 reason to simply agree to those proposals.  
13 It's just not the way the world works. Let me  
14 say something about the counter-proposal issue  
15 as well, although this has also been  
16 addressed. There were no proposals on the  
17 table for the steelworkers or the other unions  
18 to counter after December of 2005. There were  
19 no proposals on the table from December 2005  
20 until the end of March. So the concept that  
21 somehow the unions have been spinning their  
22 wheels and wasting time by not putting  
23 concrete counter-proposals or proposals on the  
24 table during that period is just silly.

25 That's not how bargaining works.

170

1 What happened was, the debtors unilaterally  
2 withdrew their proposals, unilaterally  
3 rescheduled the hearings. Both moves, we  
4 think, are good but the debtors can't now turn  
5 around and play gotcha and say oh, by the way,  
6 even though we didn't have any proposals on  
7 the table you should have divined that  
8 sometime down the road when we did file our  
9 motions we were going to accuse you of not  
10 countering proposals that we had withdrawn.  
11 With respect to the balance of equities  
12 component.

13 THE COURT: Before we get to that,  
14 do you agree that the GM-related proposal is  
15 not a proposal because it's contingent?

16 MR. PETERSON: I think within the  
17 language of 1113 I agree that it is contingent  
18 and, therefore, is not a proposal. Again as a  
19 practical matter, it's difficult to in fact,  
20 engage in concrete bargaining when it is so  
21 contingent. Regardless of whether it reaches  
22 statutory requirements, I don't know how we  
23 get our hands around it.

24 THE COURT: And yet, you seem to be  
25 saying what other unions are saying which is

1 that we can't bargain on a proposal that  
2 doesn't include GM. So aren't you effectively  
3 saying that GM has to agree first?

4 MR. PETERSON: Well, GM has to be at  
5 the table. That's correct.

6 THE COURT: More than at the table.  
7 They're at the table now.

8 MR. PETERSON: Well, not with us.

9 THE COURT: They're at the table in  
10 the sense that everyone is saying they're at  
11 the table.

12 MR. PETERSON: Yes. And they have  
13 stepped up to the plate in the attrition  
14 program.

15 THE COURT: But more than that, I  
16 think, is what you're saying needs to be that  
17 to make it a proposal, to fit into 1113 -- I  
18 think what you're saying -- I think what the  
19 other counsel, maybe with one exception, is  
20 saying, is that it doesn't really count as a  
21 proposal and yet at the same time, nothing  
22 else counts as a proposal unless it involves  
23 GM.

24 MR. PETERSON: Well, this is a  
25 predicament that, frankly, the debtors have



1 brought upon themselves. It's not of our  
2 making. They have indicated to us that  
3 they're willing to use us as leverage against  
4 General Motors to get General Motors to pony  
5 up money and they've even put dollars on the  
6 table. Where those dollars come from, I don't  
7 know. I don't know how the debtors have  
8 priced the General Motors participation,  
9 perhaps there's some rational basis, perhaps  
10 it's as a result of actual conversations  
11 they've had with General Motors. We don't  
12 know. All we know is the end result. But  
13 they have said that this is a realistic  
14 possibility. Under those circumstances we  
15 have to take it seriously. If it's just a  
16 smoke screen, if, in fact, they're not being  
17 serious and General Motors is not prepared to  
18 participate then, that's bad-faith bargaining.

19 THE COURT: If you have to take it  
20 seriously, why isn't it a proposal?

21 MR. PETERSON: Are the debtors  
22 actually saying that we can accept their  
23 proposal that involves General Motors'  
24 contributions if General Motors has said that  
25 we haven't made this commitment? Again, I

1 don't think that's the way the world works.

2 THE COURT: Okay.

3 MR. PETERSON: I think the problem  
4 is --

5 THE COURT: On the point about  
6 rejecting the proposal, doesn't the statute  
7 contemplate that since negotiations are  
8 supposed to continue after the motion is filed  
9 that the unions still have time to respond to  
10 and reject or accept or bargain?

11 MR. PETERSON: Yes, I think that's  
12 right. My point, with respect to rejection,  
13 is that is hasn't happened yet, we're not at  
14 that phase. The concept, as we understand it  
15 under the statute, is that the analysis should  
16 be on what the ultimate -- the proposal that  
17 that union ultimately rejected looks like, not  
18 the one that was first put on the table. If,  
19 in fact, the analysis, and we think this is  
20 not correct, is on the first proposal well,  
21 certainly, we haven't accepted it.

22 THE COURT: Well, the analysis is on  
23 the first proposal, but your good faith is  
24 measured not -- it doesn't just cut off at the  
25 date of the motion.

1 MR. PETERSON: I understand that,  
2 Your Honor.

3 THE COURT: Okay.

4 MR. PETERSON: Right. No. And we  
5 would -- we welcome the opportunity to  
6 negotiate. It has not happened, certainly  
7 with respect to the steelworkers. It just has  
8 not happened. And we think there's an  
9 explanation for that, which is that the hard  
10 work, if you will, is taking place away from  
11 the steelworkers' bargaining table. We're not  
12 whining about that, we're not complaining  
13 about it, we understand that that's the way  
14 the world is working. But, in the meantime,  
15 the debtor should not pretend that they're  
16 actually engaging in an 1113 process with us  
17 when they're not.

18 THE COURT: Okay.

19 MR. PETERSON: Another point made by  
20 the debtors in their response to our  
21 objections is that the unions, including the  
22 steelworkers, somehow complained that  
23 proposals were not fair and equitable because  
24 the UAW got an attrition program and we  
25 didn't. Well, that's a misapprehension that

1 also, perhaps, would have been cleared up by  
2 actually reading carefully our objections.  
3 We're not saying that at all. We're saying we  
4 have been promised an attrition program, an  
5 attrition program is a central component in  
6 the precursor to discussing the other changes  
7 in wages and benefits and terms and  
8 conditions. And it's impossible to really get  
9 involved in discussing those terms until we  
10 actually get the attrition program that's been  
11 promised to us. It will have a tremendous  
12 impact on the costing of our contracts and it  
13 has to come before we continue -- before we  
14 end our negotiations. I think another point  
15 that needs to be made in terms of balance and  
16 equities and equality of sacrifice is the  
17 ultimate sacrifice that the union members are  
18 being asked to make, which is loss of jobs.  
19 Two thirds of the steelworkers' members are  
20 going to be unemployed. That is an enormous  
21 sacrifice far beyond sacrifices being asked of  
22 the non-labor constituencies and I think that  
23 it is critical to include that in the  
24 analysis.

25 At the same time, we hear that the

1 executives are prospering. Not only have KECP  
2 targets presumably been met and lots of  
3 payments been extended to those executives,  
4 but now we hear that, in fact, this program  
5 has been extended to 14,000 non-union  
6 employees who will also be getting checks of  
7 some magnitude at precisely the time our  
8 members are going to be -- either being laid  
9 off or facing wage cuts. And the balance of  
10 the KECP program, which was deferred until  
11 July, is still on the table; it has not been  
12 withdrawn by the debtors. There are  
13 substantially more lucrative components to the  
14 KECP program which are still teed up for Court  
15 approval, just a couple of months from now. I  
16 want to make a point about the information  
17 flow issue. This, we hope, is a work in  
18 progress.

19 As of today, the debtors have not  
20 provided all of the information that the  
21 steelworkers need to evaluate their proposals.  
22 This isn't a question of adjusting one wage  
23 rate by a dollar or two an hour or increasing  
24 a deductible, these are extraordinarily  
25 complicated proposals. They are extensive and

1 they are of a piece with a major  
2 transformation plan. It's our hope that we  
3 will continue to get information. In fact,  
4 later this week, there are going to be some  
5 additional meetings between the consultants to  
6 see if we can get additional information. So  
7 we hope this doesn't continue as an issue as a  
8 practical matter but, at this point, we simply  
9 do not have the information necessary to  
10 evaluate the debtors' proposals. We  
11 certainly, contrary to what the debtors  
12 suggest in their reply, we certainly have  
13 addressed the 1114 issues and the arguments we  
14 make with respect to the procedural and  
15 substantive problems with the debtors' 1113  
16 proposals apply also to the 1114 proposals  
17 with the exception of the question of whether  
18 our wages are already competitive. So, in  
19 conclusion, the debtors have failed to bargain  
20 with the steelworkers in good faith, they have  
21 to do so before moving to reject. They have  
22 already moved to reject. They have certainly  
23 have not bargained in good faith since then.  
24 They have utterly failed to suggest that the  
25 modifications proposed to the steelworkers'

1 contract are necessary for the reasons they  
2 have articulated including what, in large  
3 measure, the fact that our wages are already  
4 quite low. And they have failed to present an  
5 attrition program which would further impact  
6 those numbers. And it is profoundly  
7 inequitable to slash the wages of union-  
8 represented workers and to throw most of them  
9 out of work while simultaneously paying large  
10 bonuses to non-union employees, in particular,  
11 executives. We hope that the Court will  
12 dismiss this motion. Regardless, of course we  
13 will continue to sit down with the debtors, as  
14 we have historically, and address their real  
15 needs to compete in the marketplace. Thank  
16 you, Your Honor.

17 THE COURT: Okay. All right, are  
18 there other union representatives?

19 MS. ROBBINS: Yes, Your Honor.

20 THE CLERK: Your Honor, there are  
21 two others that would be at least another  
22 thirty minutes of our time that haven't been  
23 scheduled.

24 THE COURT: Why don't I hear you?

25 MS. ROBBINS: Good afternoon, Your

1 Honor, my name is Marianne Goldstein Robbins  
2 at law firm of Previanat, Goldberg, Uelmen,  
3 Gratz, Miller & Brueggeman. We represent the  
4 IAM and the IBEW. We agree and will not  
5 repeat the many points that have been made by  
6 the other unions. What we would like to do is  
7 point out some of the circumstances that are  
8 unique to these two unions.

9           The IAM and the IBEW represent  
10 skilled trades at the Milwaukee location.  
11 Sixty electricians, 45 machine repair and tool  
12 and die workers as well as approximately 25  
13 retirees between the two groups. Although the  
14 Milwaukee facility is comparatively  
15 profitable, we have been informed that it is  
16 due to close at the end of 2007. Which means  
17 that, with respect to our small groups, and  
18 there's been some reference to salaried maybe  
19 taking a 35 percent elimination in jobs, our  
20 groups will take a 100 percent elimination of  
21 jobs. Our groups are not on the creditors'  
22 committee so we don't have privy to that  
23 information. We don't have estate-funded  
24 experts because we're a small group. And the  
25 problems, in addition to all the ones that the

1 unions have mentioned thus far, that we have,



2 is that it is apparent that we are simply an  
3 afterthought. Even though there has been no  
4 bargaining, no attention, we have been  
5 included in the 1113 and we do not believe  
6 that the statute permits that. We were told  
7 early on that the company was busy meeting  
8 with the larger unions and that there would be  
9 no real reason for meeting with us at those  
10 points in time. In terms of their earlier  
11 proposals, there were no bargaining sessions  
12 concerning them. There was not even a verbal  
13 statement as to the status of those proposals,  
14 other than that we're not ready to deal with  
15 you yet, and reading -- and the press releases  
16 that have been referenced previously. When it  
17 comes to the most recent proposal, we have not  
18 received information that would allow us to  
19 know what exactly has been proposed or how  
20 much it will save.

21 And I just want to make reference to  
22 one specific point that was made. Our group,  
23 according to Delphi, does not have a GM  
24 guarantee. GM financial statements have not  
25 identified a guarantee of benefits for

1 retirees or pension benefits for our groups.

2 The reference was made that there would be a  
3 health savings account in lieu of retiree  
4 benefits for our group. But that's contingent  
5 on GM's support which we don't know about. We  
6 also don't know about any kind of attrition  
7 package, although it's been promised and we've  
8 even been told that it exists but nobody has  
9 shared it with us. When we talk about  
10 information that is necessary to evaluate the  
11 proposal we don't see how you could get more  
12 basic than that and I will not go on to  
13 explain other items that we are also missing.  
14 I would like to point out to the Court that  
15 the requirement to provide necessary  
16 information to evaluate a proposal is supposed  
17 to be provided prior to the time this motion  
18 is filed. It has not been provided prior to  
19 the time that this motion has been filed.  
20 We've had references to pattern bargaining.  
21 As I mentioned in the case of our group, there  
22 was no contact after December 16th until late  
23 March when the contingent -- drafts of  
24 contingent proposals were provided. There was  
25 no in-person meeting to even discuss that,

1 prior to this motion being filed. There was a  
2 conference call. We are the one group which

3 has prepared a counter-proposal addressing all  
4 of Delphi's proposals. We did that in spite  
5 of the fact that the proposal we received was  
6 indefinite, incomplete, imprecise. We've been  
7 criticized for providing it so late. But it  
8 was April 20th when we provided it. Your  
9 Honor, that was the first time that we had an  
10 in-person meeting with any representatives  
11 from Delphi concerning the March proposal --  
12 the very first meeting. We did not have all  
13 the information; we still don't -- on that  
14 proposal. Yet, we made, what we could of a  
15 counter-proposal. That counter-proposal  
16 included a two dollar an hour wage reduction,  
17 a reduction in holidays a reduction in shift  
18 premiums. We were promised, at that point,  
19 that there would be a proposed attrition  
20 package, the remainder of our information  
21 requests would be provided and there would be  
22 additional meetings and there would be a  
23 counter-proposal to our counter-proposal.  
24 There hasn't been a counter-proposal. Delphi  
25 hasn't been willing to schedule a meeting.

183

1 There hasn't been an attrition package.

2 In other words, Delphi is not ready

3 to bargain with us, even if we make a counter-  
4 proposal. We are demonstrating package --  
5 pattern bargaining. No matter what we do,  
6 they will not bargain with us. They are not  
7 ready to bargain with us. We understand that  
8 we're small but if that's the case we do not  
9 belong as part of this 1113 and 1114 hearing.  
10 We do not belong as part of the motion.

11 THE COURT: Where was that -- your  
12 proposal was not conditioned upon some sort of  
13 overall agreement with other unions, right?

14 MS. ROBBINS: No. There were holes for  
15 things like health insurance because we hadn't  
16 been told what the program was -- and several  
17 other holes. It's very hard to deal with job  
18 security issues when you've been told there  
19 will be an attrition package and it hasn't  
20 been provided and your members have to weigh  
21 what they have now verses an attrition package  
22 that hasn't been proposed.

23 We also want to raise some things,  
24 raise some points concerning the criteria of a  
25 proposal that is fair and equitable and that

184

1 is necessary. As I've mentioned, the IBEW and  
2 IAM agreed to significant wage cut or at  
3 least, made that as a counter-proposal to

4 resolve the matter with other provisions.  
5 They do not have the sub-benefits that the UAW  
6 has; they don't have the same Harding  
7 requirements. We understand those provisions,  
8 we would like to have them, we just don't.  
9 Delphi seeks to abolish our retiree health  
10 insurance, freeze the pension. The theory is,  
11 and it was referenced by Delphi in its opening  
12 statement, well, the unions have these  
13 guarantees with GM. Well, Delphi says, we  
14 don't know of any guarantee you have with GM  
15 but we want you to take the same proposal of  
16 no retiree insurance and a frozen pension.  
17 Even though you don't have the same guarantees  
18 for continuing the pension and continuing  
19 retiree health insurance anywhere else.  
20 Now, there's another group that doesn't  
21 have those guarantees, as far as we know,  
22 they're the salaried employees. Now, Delphi,  
23 even though they're a larger group than our  
24 group, Delphi has retained retiree health  
25 insurance for salaried employees. Delphi, at

185

1 the time our proposals were made, had not  
2 chosen to freeze their pension and even now is  
3 not going to freeze it on the same schedule.

4 And there's no showing that it's as  
5 vulnerable. There's no showing that there is  
6 the same potential additional loss of pension  
7 benefits -- supplemental benefits.

8 In other words, our group, which has  
9 worked for Delphi for years on the promise of  
10 retirement benefits, could lose everything.  
11 More so than any other group. The splinter  
12 unions do not have the GM guarantees and do  
13 not have Delphi's recognition that maybe, they  
14 should retain their retirement benefits in any  
15 part. We don't have either thing. We're  
16 going to be treated worse than everybody else  
17 and no one wants to pay attention. We're an  
18 afterthought. They'll get around to thinking  
19 about us well after the hearing and the  
20 decision this Court's being asked to make  
21 occurs and this, on the eve of the closure of  
22 our plant. No attrition package. Plant  
23 closed. No clear answer as to whether or  
24 where retiree benefits will come from, in any  
25 form. That is not fairness and equity. That

186

1 is a misplaced motion that should never have  
2 been filed when these issues had not been  
3 addressed. No meetings to talk about this.

4 THE COURT: Okay, I got that point.

5 MS. ROBBINS: The last point that I  
6 will make, Your Honor, and it's very short is  
7 simply that you can't say that it is necessary  
8 to treat these splinter groups more poorly  
9 than everybody else. We're small. We could  
10 be provided with comparable benefits. It  
11 wouldn't break anybody. A hundred employees,  
12 25 retirees. You can do it for salaried  
13 groups, it's a lot larger, but you can't do it  
14 for us? It's not necessary and it's not fair  
15 and equitable and it doesn't comply with the  
16 statute. We ask that you deny the motion,  
17 Your Honor.

18 THE COURT: Okay, thank you.

19 MS. MEHLSACK: Good afternoon, Your  
20 Honor. Barbara Mehlsack, Gorlick, Kravitz &  
21 Listhaus for the three Operating Engineers  
22 Locals 18-S, 101-S and 832-S. I recognize the  
23 late hour, Your Honor, and I've been listening  
24 to the growlingstomachs, but I have every  
25 confidence that Your Honor is not going to let

187

1 us, despite our small size -- we represent a  
2 scant 20 employees. Mr. Butler said 19 and  
3 that's an issue I'll discuss further. And  
4 we're covered by three separate collective

5 bargaining agreements. And I trust that Your  
6 Honor, as this Court has done in Horsehead  
7 Industries, will recognize that we are  
8 entitled to the same rights, under 1113, as  
9 our colleagues and that the debtor has to meet  
10 the same obligations with respect to 1113 as  
11 it does with our colleagues. Though our three  
12 operating engineers' locals, as I said  
13 represent a total of 20 employees. We have  
14 one employee at a plant in Olef, Kansas, six  
15 employees at the plant in Rochester and 13  
16 employees at the plant in Columbus. Each of  
17 these plants is faced with an entirely  
18 different factual situation. The plant in  
19 Olef, Kansas was a battery facility that has  
20 been shut down and, in fact, demolished. And  
21 our lone employee, who has been the butt of  
22 many jokes for the time we have taken in other  
23 aspects of this proceeding, is the only hourly  
24 employee left at the plant because his  
25 presence is necessary as a result of the

188

1 clean-up requirements for the toxic waste at  
2 the facility. The other two plants, Rochester  
3 facility has six employees, we understand that  
4 they have identified as one of the sites at  
5 which Delphi manufactures has its core



6 products. In contrast to the Columbus  
7 facility, which has 13 employees and has been  
8 identified as a site that will be either  
9 closed, consolidated or sold, we have no idea  
10 which of the three, or maybe all three.

11 While it may seem frivolous to use this  
12 Court's time to talk about the one employee in  
13 Kansas, I'm going to do that because the  
14 debtors' treatment of that employee at a  
15 collective bargaining agreement in Kansas is  
16 emblematic of its failure to meet the 1113  
17 requirements with respect to our three locals.  
18 We recognize the practical realities of what  
19 the debtor calls pattern bargaining. We  
20 recognize that it may be necessary from a  
21 business point of view for the debtor to  
22 utilize the strategy it has adopted. But as  
23 this Court said in Horsehead Industries,  
24 having made that choice not to provide us with  
25 a proposal, not to bargain with us it cannot

189

1 then sweep our contracts away in this tsunami  
2 of papers that it has dumped on all of us.  
3 The way the debtor has treated the Olef,  
4 Kansas contract and the employee there, is  
5 evidence of the fact that the debtor has no

6 intention of negotiating with the operating  
7 engineers until it concludes its negotiations  
8 with GM, the UAW, possibly the IUE, possibly  
9 the steelworkers.

10 I'm not sure at what point the debtor  
11 believes it's appropriate to come to us but in  
12 the first place, the debtor has never made any  
13 proposal directed to the Local 101 contract,  
14 even though it lists that contract in its  
15 Exhibit A to Mr. Butler's declaration, as a  
16 contract subject to the 1113 motion. You will  
17 search through all of the exhibits in those  
18 many volumes, Your Honor and you will find no  
19 proposal whatsoever directed to the Local 101  
20 contract. That's a separate contract from the  
21 Local 18 contract which is a separate contract  
22 from the Local 832 contract. But never mind  
23 that, because when Delphi sent the Columbus  
24 and Rochester proposals to our general  
25 president in Washington, not to our bargaining

190

1 committees and to our locals, but to our  
2 general president and he forwarded them to all  
3 three locals. In fact, Local 101 responded  
4 with a letter to the debtor saying, we want to  
5 negotiate. We want to negotiate what's going  
6 to happen to this plant. We understand that

7 the clean-up is likely to be concluded before  
8 our contract expires and the contract expires  
9 there 14 months from now. And we want to  
10 negotiate what's going to happen to our  
11 employee, to the plant and to the contract.  
12 No response was forthcoming, Your Honor. The  
13 debtor acknowledges and we have a stipulation  
14 and it's an exhibit that they received the  
15 letter, they acknowledged they never responded  
16 to the letter. We're not surprised, Your  
17 Honor. We're not surprised that they don't  
18 want to negotiate with Danny Baird, who is the  
19 business agent from Local 101 and represents a  
20 single employee in a closed facility.

21 But it is noteworthy that Local 101 and  
22 Delphi were able to negotiate the terms of  
23 that plant-closing so that a three-employee  
24 bargaining unit was reduced to one. Whatever  
25 attrition issues, whatever manning issues had

191

1 to be worked out, were worked out in that  
2 collective bargaining agreement when the local  
3 union and the Delphi representative actually  
4 sat down to negotiate. Despite all Delphi's  
5 posturing about the unions having accepted  
6 pattern bargaining and, therefore, we can't

7 complain that we're not being negotiated with,  
8 the fact is, under 1113, as my colleagues have  
9 said, if the debtor chooses to engage in  
10 pattern bargaining and not to negotiate with  
11 the splinter unions, it cannot then move to  
12 reject our contracts under 1113. You can't  
13 have it both ways. Not only that, Your Honor,  
14 the failure to respond to the plea from Kansas  
15 to negotiate is evidence that even if we had  
16 said to the debtor, let's negotiate, if we had  
17 had something to negotiate, and I'll address  
18 that, the debtor had no intention and was not  
19 willing to negotiate, having not responded to  
20 a specific demand to sit down and negotiate.  
21 As my colleagues have said, our obligation is  
22 not to make a counter-proposal it's to  
23 negotiate. But it's to negotiate when we have  
24 something to negotiate against. The debtor  
25 has not made a proposal -- a concrete proposal

192

1 to us --

2 THE COURT: You've gone over all of  
3 that.

4 MS. ROBBINS: Okay, let me -- one of  
5 the things -- we've not gotten an attrition  
6 program. And I want to remind Your Honor that  
7 the debtor has said to us, directly and has

8 said to our clients that an attrition program  
9 is essential to negotiating a consensual  
10 resolution. When the debtor transmitted his  
11 proposals to the operating engineers the  
12 debtor said, and I quote Mr. Butler, we hope  
13 the parties can utilize the momentum created  
14 this week as we seek the Bankruptcy Court's  
15 approval of hourly attrition programs which  
16 might be negotiated with the operating  
17 engineers. They've never offered us that  
18 program, Your Honor.

19 At the same time, as my colleagues have  
20 also have said, they're offering the KECP  
21 program to 14,000 salaried employees. They're  
22 telling us, you're going to have to wait to  
23 see what money GM comes up with before we can  
24 negotiate with you. But Delphi has apparently  
25 been able to reach into its own pockets and

193

1 come up with money to fund a KECP program for  
2 those 14,000 employees. Not only that, it has  
3 said the GM benefit guarantee is the key to  
4 our proposals being equitable because that  
5 means the hourly employees have retirement  
6 benefits, health insurance bene -- and life  
7 insurance post retirement. And so, it's not

8 unfair of us to continue those benefits for  
9 our salaried employees. While somehow they've  
10 been able to reach into their pockets to find  
11 the money to continue those benefits for their  
12 salaried employees, but they can't reach into  
13 their pockets, or at least they're not willing  
14 to come to us with a proposal that says, you  
15 know what? If GM isn't willing to fund your  
16 20 people, we'll find the money to fund your  
17 20 people with a severance or an attrition  
18 package that is fair and equitable because it  
19 puts you on the same level playing field as  
20 everybody else. They haven't been willing to  
21 do that and so they're not entitled to claim  
22 that their proposal meets the fair and  
23 equitable standard of the statute.

24 Finally, what our submissions  
25 demonstrate, on a micro level, is what the

194

1 experts demonstrate on a macro level. That  
2 until the attrition program effects are known,  
3 the debtor cannot say that its proposals are  
4 necessary to a reorganization. Take the  
5 Rochester plant. We have six employees, our  
6 business agent has estimated that four of the  
7 six employees would be eligible for a UAW-like  
8 attrition program that would leave a

9 bargaining unit of two employees, Your Honor.

10 The debtor have said there may be  
11 22,000 people taking the program, but it  
12 doesn't know the savings that it can achieve  
13 by those 22,000. Certainly it could calculate  
14 the savings it would achieve in the Rochester  
15 plant from four out of the six employees  
16 taking the program, were it to offer us the  
17 program.

18 The same defects apply to the debtors'  
19 proposals to do away with post-employment  
20 health insurance and post-employment life  
21 insurance benefits. Again, as we said, the  
22 debtor claims it's equitable to maintain those  
23 benefits for salaried employees because of the  
24 GM guarantee. The guarantee doesn't apply to  
25 us. The debtor hasn't explained how it's

195

1 going to deal with that problem when it comes  
2 time to negotiate with us. Again, as this  
3 Court recognized in Horsehead Industries, when  
4 it refused to recognize rejection of the  
5 contract of a small bargaining unit under  
6 almost identical circumstances, it may make  
7 sense to the debtor to pursue this strategy.  
8 It does not give the debtor the right under

9 the statute to reject our contract. Thank  
10 you.

11 THE COURT: Thank you. All right, I  
12 will resume at three.

13 (Whereupon this morning session  
14 proceeding was concluded.)

15 (Time noted: 2:00 P.M.)

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196

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, hereby certify that the  
foregoing is a true and correct transcription,  
to the best of my ability, of the sound  
recorded proceedings submitted for  
transcription in the matter of the bankruptcy  
proceeding of:

10 DELPHI CORPORATION, et al.

11

12 I further certify that I am not employed  
13 by nor related to any party to this action.

14

15 In witness whereof, I hereby sign this

16 date:

17 May 11, 2006.

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20 \_\_\_\_\_  
Lisa Bar-Leib

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